

# DOCUMENT RESUME

ED 144 478

HE 009 266

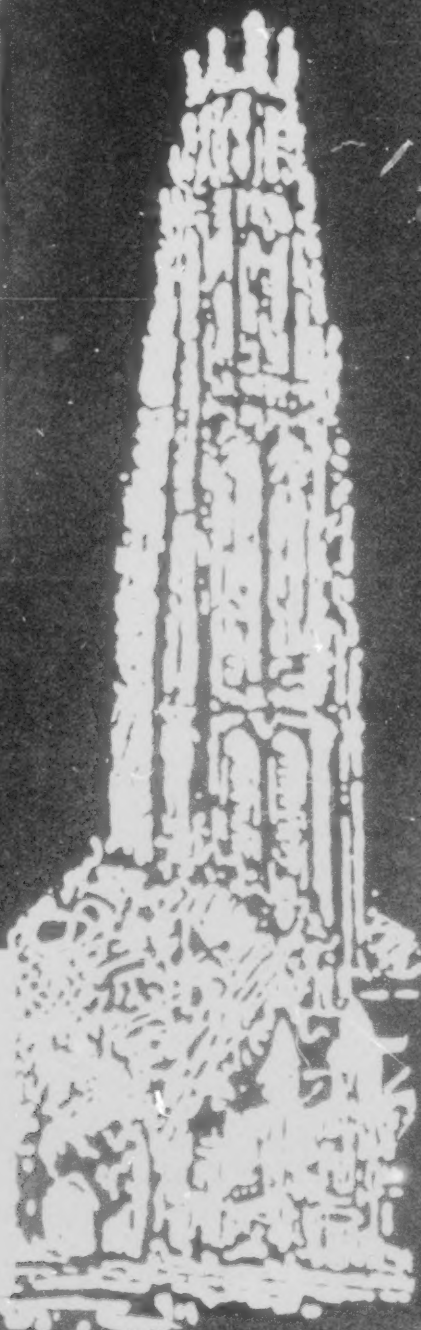
AUTHOR Van de Graffe, John F.  
 TITLE Legislating German University Structure: The Politics of Tradition in Hesse, 1960-1966. Yale Higher Education Program Working Paper.  
 INSTITUTION Yale Univ., New Haven, Conn. Inst. for Social and Policy Studies.  
 REPORT NO YHEP-1  
 PUB DATE Jan 75  
 NOTE 86p.  
 AVAILABLE FROM Yale University, Inst. for Social and Policy Studies, 16A Yale Station (111 Prospect Street), New Haven, Connecticut 06520  
 EDRS PRICE MF-\$0.33 HC-\$4.67 Plus Postage.  
 DESCRIPTORS \*Activism; Administrative Change; Administrative Problems; Change Strategies; College Students; \*Comparative Education; \*Educational Change; \*Foreign Countries; Governance; \*Higher Education; \*Legislation; Political Influences; Universities  
 IDENTIFIERS \*West Germany

## ABSTRACT

The protracted process by which Hesse's University Law of 1966 was enacted is traced. It is shown how that process gave rein to the still dominant forces of accommodation to traditional ideals of university mission and structure. As the last important attempt at moderate university reform in Germany, the law mandated certain changes in university structure and gave the universities the explicit option of undertaking more extensive structural reforms. The traditional style of politics and its effect on higher education are described. It is concluded that Hesse's head start in legislating the reform of its universities did not enable it to deal significantly more effectively than other West German states with the increasing pressures facing higher education in the 1960's, including student unrest. (Author/LBH)

\*\*\*\*\*  
 \* Documents acquired by ERIC include many informal unpublished \*  
 \* materials not available from other sources. ERIC makes every effort \*  
 \* to obtain the best copy available. Nevertheless, items of marginal \*  
 \* reproducibility are often encountered and this affects the quality \*  
 \* of the microfiche and hardcopy reproductions ERIC makes available \*  
 \* via the ERIC Document Reproduction Service (EDRS). EDRS is not \*  
 \* responsible for the quality of the original document. Reproductions \*  
 \* supplied by EDRS are the best that can be made from the original. \*  
 \*\*\*\*\*

HEAD 9266



THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

Walter K. Clark

**New Haven, Conn. 06520**

LEGISLATING GERMAN UNIVERSITY STRUCTURE:  
THE POLITICS OF TRADITION IN HESSE,  
1960-1966

by

John H. Van de Graaff

YALE HIGHER EDUCATION PROGRAM  
WORKING PAPER

YHEP-1

January 1975

BEST COPY AVAILABLE

In the interest of fullest possible circulation of information and ideas, the Institution for Social and Policy Studies reproduces and distributes these Working Papers at the request of authors who are affiliated with the ISPS. They are not edited or reviewed, and the views in them are those of their authors.

A list of all ISPS publications and Working Papers is available upon request from the Director's Office, 111 Prospect Street.

Content of this Working Paper is not for publication or for quotation without the permission of the author.

Institution for Social and Policy Studies  
Yale University  
111 Prospect Street  
New Haven, Connecticut 06520

LEGISLATING GERMAN UNIVERSITY STRUCTURE:  
THE POLITICS OF TRADITION IN HESSE,  
1960-1966

In 1966 half a decade of political effort culminated in the enactment by the legislature of the West German state of Hesse of a law introducing modest changes in the structure of the Hessian universities. Although a number of other German states (Länder) had taken analogous initiatives toward reform in the early 1960s, Hesse's was the only one to succeed prior to the onset of student protest on a national scale in 1967. That unrest provoked a second phase of much more intensive legislative activity, which by 1973 had led to the imposition of drastically new university structures in all of the states, including Hesse. Ephemeral and unique though it therefore was, Hesse's University Law of 1966 is of considerable historical interest. As the last important attempt at moderate university reform in Germany, it mandated certain moderate, incremental changes in university structure--a structure which had barely changed since the 19th century. More importantly, the law gave the universities the explicit option of undertaking more extensive structural reforms, such as extending the term of the rector or even replacing him with a president as chief university executive.

The immediate purpose of this paper is to trace the protracted and arduous process by which the 1966 law was enacted and to show how that process gave rein to the still dominant forces of accommodation to traditional ideals of university mission and structure. There was yet consensus within the Hessian universities--expressed primarily by professors, but shared by students and junior staff--that their admini-

strative structure needed at most moderate reform and that, in short, the traditional German university was still "healthy at its core".<sup>1</sup> The responsible legislators, in turn, were more than willing to accept that consensus and to modify the initially somewhat more ambitious government bill accordingly. Thus the paper provides a glimpse of a highly traditional style of politics which the outbreak of student protest consigned to history, along with the traditional German university itself. The further argument, then, is twofold: the stronger reform options of the law were likely to remain little more than window dressing as long as the consensual climate of the postwar years lasted; yet, paradoxically, the strength and persistence of that consensus meant that, once it faded, the tensions and conflicting interests which it masked were likely to emerge with full force, leading to a bitter political struggle over new and much more far-reaching structural reforms.

#### Higher Education and the German States

Education—or, more broadly, all cultural activities (Kultur)—was the major area of public policy reserved exclusively for the states by the Federal Republic's Basic Law of 1949. Although this system of "Kulturföderalismus", as it is often called, has come under increasing attack in recent years<sup>2</sup> and was in fact somewhat modified in 1969 by constitutional amendments giving certain powers to the Federal government,<sup>3</sup> in the period 1960–66, which is the primary concern of this paper, the prerogatives of the Länder were still effectively undiluted.<sup>4</sup> Indeed, in 1961 the Federal Constitutional Court handed down its well-known "television judgement" repudiating the federal government's

attempt to establish a channel of its own, with a consequent chilling effect on further attempts at federal influence. For higher education the establishment of the Science Council (Wissenschaftsrat) in 1957 represented a recognition of the need to give the Federal government a formal planning role together with the states, but the Council did not deal more than peripherally with questions of university organization and administration until the late 1960s.<sup>5</sup>

The major limitation on the states' power to determine university organization was the traditional concept of university autonomy. Although it had some formal grounding in Article 5(3) of the Basic Law, which guaranteed the freedom of research and teaching, the concept was only vaguely defined and rested mainly on customary law (Gewohnheitsrecht).<sup>6</sup> In response to the abuse which university autonomy suffered at the hands of the Nazis,<sup>7</sup> a truce was established between the state ministries and the universities in the immediate postwar period, with the ministries largely refraining from any measures that might be construed as instructions on the universities' autonomy. The ministries followed the lists submitted by the faculties in issuing professorial calls, and statutory revisions were carried out primarily by the universities.<sup>8</sup> Where negotiations with the state on university structure took place, they were with the ministry; only for individual institutions was legislation enacted affecting university structure.<sup>9</sup> What the universities saw as a restoration of their long-abused autonomy, then, was in reality a more extreme version of it than they had ever experienced.

State governmental structures follow very much the federal pattern, although with unicameral legislatures (the Bavarian senate is the only

exception). Since the Basic Law assigns the states primarily the role of administering policies determined at the federal level, their legislatures are not active law-making bodies. They are in session only sporadically; in the 1958-62 electoral period, for example, the Hessian Landtag met in plenary session 62 times, and held 469 committee meetings.<sup>10</sup> Even when in session, only a portion of the legislatures' time is devoted to law-making activities, much being taken up by budgetary debates and legislative oversight of a general kind.<sup>11</sup> A few laws receive a disproportionate amount of attention and the university reform legislation debated since the early 1960's has invariably fallen into this category. As with parliaments virtually everywhere, lawmaking is dominated by executive initiative; 85 percent of the laws enacted by the Hessian Landtag in 1958-62 were submitted by the state cabinet.<sup>12</sup>

The state cabinets tend to mirror the federal cabinet in Bonn, although with a smaller number of ministries. A Minister President heads the government, and three "classical" ministries are included: Finance, Interior, and Justice. Among the rest, the education ministry (usually Kultusministerium), which is normally responsible for the universities, is perhaps the most important. Education ministers have always tended to come somewhat more frequently than any others from outside the party elites, and in recent years this tendency has been reinforced as the political sensitivity of the office has reached new heights. Party control of the Länder has usually been balanced; as of 1966, the Christian Democratic Union (CDU; in Bavaria, CSU) headed five state governments and the Social Democrats (SPD) six, while of

the eleven ministers of education, six belonged to the CDU (or CSU) and five to the SPD.<sup>13</sup>

It is logical to ask at this point what effect, if any, party control tends to have on university policy. Providing a satisfactory answer is more difficult than it might at first appear. One possible approach is to inquire as to the past policies of the parties with regard to education generally. Here it is clear that, of the main parties, the SPD pressed most strongly from the early years of the Federal Republic for such reforms as the elimination of confessionally segregated schools and some degree of integration of the three different types of secondary schools, while the CDU was concerned to protect and maintain the traditional system of differentiation by confession and academic selection.<sup>14</sup> Yet it is risky to generalize from such observations, for the universities have long been treated separately from the lower levels of education.

But inquiring about past policies in higher education itself is also risky. Admittedly the SPD and to a lesser extent the liberal forerunners of the Free Democratic Party (FDP) pursued reformist policies during Weimar, against stiff resistance from the universities and with only modest results.<sup>15</sup> But the post-1945 backlash against state intervention of any kind effectively neutralized any comparable reform aspirations the SPD might have had.<sup>16</sup> This postwar restoration of university autonomy, under the system of cultural federalism, meant that matters affecting the universities were dealt with by the Land bureaucracies, in incremental, stopgap fashion.<sup>17</sup>

Fortunately we need not rely solely on the examples of history

and general education policy to deduce the parties' orientation towards higher education. In the years around 1960, state politicians and civil servants began gradually to shed their reserved attitude towards university affairs, as it became evident that the universities were not using their autonomy to undertake reforms on their own. Certain legislative initiatives were undertaken aiming at setting university structures on a firmer legal basis, and (in some cases) introducing structural reforms.<sup>18</sup>

A brief survey of these initiatives in the years 1961-64, focussing (as in the rest of the paper) on their implications for university structure, confirms our impression of the reformist orientation of the SPD (and to a lesser extent the FDP), and the CDU's conservative leanings.<sup>19</sup> Two broad thrusts can be distinguished, which both reappear in Hesse and, with greater intensity, in the post-1967 period. The first, which is found in initiatives supported by all of the parties, is to regulate the relationship of the university to the state, as well as the administration of non-academic (general and financial) affairs. The main specific measure is the establishment of an administrative council in addition to the academic senate, together with a chancellor to handle non-academic affairs on a day-to-day basis and often to chair the council.<sup>20</sup> The characteristic difference between the CDU and the other two parties is that the former is content to leave academic administration untouched, while the latter propose at least rudimentary measures to strengthen it, such as lengthening the term of the rector<sup>21</sup> or providing for the option of a full-time university president who would combine the functions of

rector and chancellor and thereby facilitate coordination of academic affairs and the rest of the administration.<sup>22</sup>

The second main thrust of the proposed bills--although it is limited to those sponsored by the SPD and FDP--is to temper the oligarchy of the full professors (Ordinarien).<sup>23</sup> The bills seek to reduce the authority of the Ordinarien over the teaching and research activities of the less senior members of staff, including the assistants,<sup>24</sup> and also to ensure the participation of junior staff and students in university government.<sup>25</sup> However moderate the actual provisions--and inadequate to the magnitude of the problem--this again demonstrates the greater tendency of SPD and FDP to advocate reformist measures.

Although these party-related differences in policy orientation were real enough, one should be careful not to overemphasize party association as an explanatory factor. For example, the two Christian Democratic bills included in the foregoing sketch were prepared under government auspices, which is doubtless an additional factor accounting for their conservative, status quo orientation.<sup>26</sup> However, for the purposes of this paper, a careful assessment of this body of legislative initiatives is not crucial, since only Hesse actually succeeded in enacting general university legislation before 1967. Therefore the various measures--in the end even that of Hesse--were forerunners of the post-1967 wave of legislation, which did have far-reaching effects on the universities. Nevertheless, Hesse is significant as a last case of the politics of moderate incremental reform.

#### Hesse in Relation to the Other Lnder

The eleven Lnder of the Federal Republic (Berlin included) form

a relatively homogeneous ensemble, compared, say, to the cantons of Switzerland or the American states. Among the eleven, Hesse in the mid-1960's ranked fifth in population and area, third in population density (with the three city-states excluded), and sixth in its proportion of both Protestants and Catholics.<sup>27</sup> Geographically, it links northern and southern Germany and extends from East Germany to within 80 miles of the western border. The northern part of Hesse is rural in character, while the area around Wiesbaden (the capital), Frankfurt and Darmstadt in the south is one of the largest urban concentrations in the Federal Republic.

Politically, Hesse is less typical; indeed, aside from the city-states of Berlin, Hamburg and Bremen, it has been the only secure bastion of the Social Democratic Party (SPD), which has headed the government continuously since 1947. This enabled the Hessian SPD, from 1951 on under Minister President Georg-August Zinn, to develop long-term and pragmatic programs oriented towards progressive social institutions. "Before the [SPD] struggled through to the adoption of the Godesberg Program [in 1959] ... Zinn had already successfully practiced the process of adjusting Social Democratic dogma to the demands of so-called modern industrial society".<sup>28</sup> This was symbolized in the slogan "Hessen vorn"--"Hesse on top", rendered freely; it came to connote not merely Hesse's progressive social policies, but the very idea of a positive and fertile competition among the Länder as the foundation of German federalism.

The Hessian SPD's reputation as the bellwether of German federalism, together with the SPD's record of initiatives toward university reform in other states, indicates that Hesse can be treated as a critical case

for determining whether state initiative was capable at all of achieving meaningful changes in university structure in the political climate of the early and mid-1960s. If Hesse was unsuccessful under such relatively favorable conditions, other states would presumably have been even less likely to succeed.<sup>29</sup> The post-1967 upheaval, coming as it did so soon after the enactment of the Hessian law, precludes a definitive answer, but much can be deduced from the process of enactment and the early phases of implementation.

Initial Deliberations: 1959-1962

In January 1959 Hesse's Minister President Zinn, in his declaration of government policy to open the new legislative period, announced to parliament his intent to "unify and reform university law, in order to expand the autonomous responsibility of the universities".<sup>30</sup> Over a year later, in May 1960, the Minister of Education, Professor Ernst Schütte was asked when the draft would be ready. Schütte replied that his ministry had been at the task for some time, considering what "basic features" a law should have in order to "fix the legal status [Rechtsstellung] of the university teachers, the students and the administrative structure in a few paragraphs". The main aim "was to achieve a certain uniformity in the different constitutions of the [Hessian] universities".<sup>31</sup> Thus in this initial phase of the deliberations, which lasted through the summer of 1962, the ministry held to the post-war conception of extensive university autonomy and did not yet demonstrate reformist ambitions.

These early discussions were characterized by a strong concern for confidentiality. They took place entirely out of the public eye and,

indeed, beyond the ken of all but a few members of the four Hessian universities. In fact, as Schlütte made his noncommittal statement in the Landtag, his officials, working in a commission with a number of professors, had already prepared an internal "ministry draft" for a law,<sup>32</sup> which the Hessian Rectors Conference (HRK) discussed at its regular meeting on 13 May 1960.<sup>33</sup> It turned out that the rectors had not known of the existence of the commission nor even that a draft was in preparation.<sup>34</sup> At this very early stage, students do not seem to have been consulted. In reply to protests by the Frankfurt students against this lack of consultation, the minister told them that no discussion draft had yet been formulated. By the end of May, the draft had been withdrawn by the ministry.<sup>35</sup>

A long pause ensued, until the next draft was ready for deliberation in early January 1962. In sending it to the universities, Minister Schlütte expressed with disarming frankness the basic rationale for the policy of confidentiality which he pursued in this entire initial phase.<sup>36</sup> In his opinion, the general public was not expert in such matters as university policy, and it was therefore best for the government and the universities to reach agreement before any draft was published.

Traditionally, the German universities had always been governed in such fashion, largely through direct if often distant links between the ministry in charge and individual professors. Consultations with the four professors on the original commission had been continued through early 1961. In 1962, as if to provide a modest preview of the greatly expanded consultations to come, that commission was enlarged to include

two students and two of the universities' chief administrative officers (Verwaltungsdirektoren). However, the professors, represented above all by jurists schooled in university law, continued to assert their prerogative to speak for the university as a whole.

On grounds of confidentiality, the university rectors made attempts to hinder the students' involvement in the consultation process.<sup>37</sup> Prior to the first meeting of the enlarged commission, the rectors refused to show their counter-proposals to the two student members. In the course of the meeting, the professors supported the students' request to see the rectors' draft, but the ministerial representatives hesitated to provide it, as it had been entrusted to them by the rectors as strictly confidential. "Thus the students could follow the course of the negotiations only with difficulty".<sup>38</sup> Only after pressure from the ministry did the rectors give the students a single copy of their draft just before the second meeting.

At this point the matter was again dropped, as the end of the legislative period was approaching and state elections were due for the fall. University affairs played no part in that campaign. Indeed, the substance of the proposed legislation itself seemed hardly at issue.<sup>39</sup> There were two main innovations, both familiar to us from other bills. First, the rector was to be assisted by a quasi-independent chancellor (normally a senior civil servant) who would assume responsibility for non-academic administration together with a small administrative committee (Verwaltungsausschuss) consisting mainly of professors. This measure involved a significant transfer of responsibility from the ministry, which had traditionally handled such matters directly to a great degree,

to the university, and a large degree of agreement on it was achieved.<sup>40</sup> Secondly, student representatives were to be included on the main policy-making organs of the university and the faculties. The rectors did not oppose this in principle, but wanted the law to leave the universities greater leeway in implementing it.<sup>41</sup>

For our theme, the substantive issues are less significant than the way in which these first tentative efforts at legislation so clearly revealed tensions within the university, which had traditionally taken great pride in its unity. Especially the rectors provoked friction by insisting on their prerogatives and the maintenance of confidentiality. They evidently regarded themselves as legitimate spokesman for the university as a whole and for all groups within it.<sup>42</sup> Clearly the rectors could stand and speak for the interests of their fellow Ordinarien, although even this was sometimes disputed,<sup>43</sup> but it was difficult for them to accept that the sometimes divergent views of other groups were equally worthy of representation.

#### Concern for Reform

Minister President Zinn's new government decided to extend the pause in legislative activity brought on by the state parliamentary elections in late 1962. In his policy declaration of January 1963, Zinn asserted that the need for university reform was growing. However, further work on legislation was to be postponed "until matters are further clarified and until our universities have made up their minds on the necessity and the nature of an internal reform".<sup>44</sup>

In the next few months, the government's hesitation was widely criticized, most actively by the students and in a series of debates

in the state parliament.<sup>45</sup> Although the latter dealt mainly with generalities, they showed that parliamentary patience was wearing thin and that, at least in Hesse, the universities' freedom from state intervention--which had lasted since 1945--was in question. Education Minister Schlütte himself seemed to welcome prodding from the legislative chamber. In April 1963, he stressed that the Science Council's recent proposals required "quite definite measures and reforms ... from the universities within the framework of their autonomy and ... that the universities have not as yet fulfilled these recommendations".<sup>46</sup>

Since its foundation in 1957, the Science Council had quickly become the most important body for policy-making in higher education at the federal level, although formally it had only advisory functions. The report to which Schlütte referred<sup>47</sup> included a number of brief proposals aimed at the more effective functioning of university administration. The authority of the central organs was to be strengthened relative to the faculties (although it was not clear just how); the rector was to be elected for at least a two-year term rather than the traditional one year; to ensure continuity of general administration a chancellor and administrative committee were to be instituted, in a form similar to the 1962 Hessian bill. In the area of curriculum, the stated concern was to organize courses of study more rationally, thereby reducing the number of semesters needed by students to finish and permitting the university to handle the rising numbers of students more effectively; however, only a few modest measures were proposed. Altogether, these recommendations would have brought at most incremental changes, for they were well within the bounds of traditional structures. Nevertheless,

it is clear in retrospect that they pointed in the direction of the more explicitly technocratic conception of the university to be developed by the Science Council and others in the following years, on which we will have more to say below.

Significantly, certain of these ideas were echoed in parliament. Grosskopf of the CDU asserted Hesse's "legitimate claim" to strive for a "maximum of efficiency and a maximum of developmental possibilities" in its educational institutions. Technology and the sciences were crucial for the development of society, in the view of Mrs. Walz (CDU); they had become "a decisive instrument of political power".<sup>48</sup> More specifically, two legislators proposed that the rector's term of office be lengthened to two or three years; clearly, no major structural change was envisaged, for the sacrifice involved was to be compensated by giving each retiring rector a year for research--an idea in keeping with the traditional concept of the office.<sup>49</sup>

The other main thrust of dissatisfaction with the current situation of the university was democratic in orientation. Reformers were as yet relatively unconcerned with broadening the social background of the student body;<sup>50</sup> rather, their aim was to ameliorate the steepness of the authority structures in the university by granting its members, including Nichtordinarien, assistants<sup>51</sup> and students, the right to participate in governance. General exhortations to this effect were heard frequently from the Hessian legislators during 1963. More detailed proposals had recently been put forward by students, most notably in comprehensive recommendations by the German Student Association and the Socialist German Students League,<sup>52</sup> which attempted to reinterpret

the mission and structure of the university in democratic, socially critical terms. Significantly, however, these works attracted relatively little attention during the period of moderate reform which we are discussing; they were rescued from oblivion only as the events of 1967-68 created a climate receptive to extensive reform of higher education.

#### Successive Bills, 1964-65

In the next phase, which finally led, by May 1966, to enactment of detailed legislation, ministry bills--referred to hereafter as Discussion Bills I and II respectively--were submitted in October 1964 and January 1965 to extensive consultations with professors and students. In the late spring of 1965, a further version was accepted by the Hessian cabinet, as the government bill, and transmitted formally to the state parliament.<sup>53</sup> This section analyzes those features of the government bill which were of greatest substantive and political significance, sometimes in comparison with earlier versions in order to illustrate the evolution of the bill. However, it is crucial to stress again that, as we have already seen in the earliest phase, traditional structures still were not called into question in any fundamental way. Thus agreement over alternative versions normally concerned details of nuance or formulation; in the few cases where departures from the letter of traditional norms were envisaged, they were incremental or ad hoc in character.

Nonetheless, in keeping with their explicitly reformist objectives, the new drafts were considerably longer and more detailed than the earlier ones and, partly for this reason alone, engendered a greater degree of political controversy. The draft of January 1962 had included

just 16 paragraphs; the government bill of May 1965 had 50 paragraphs. Therefore, while at the outset one could still have spoken of "framework legislation" in a real sense, it could now be argued that the state was seeking to regulate aspects of the universities' organization which they should be able to determine freely in their statutes.<sup>54</sup> In this view, the legislation represented an impermissible encroachment on university autonomy as guaranteed in both the federal and the state constitutions.<sup>55</sup>

A first major aim of the government bill was to formalize ways in which the ministry could influence certain aspects of university affairs. To begin with, the state was explicitly given the formal right to appoint its own candidate to a vacant professorial chair if the faculty did not present its own short list of three names within six months after learning of a vacancy. Although this provision was doubtless intended to be used only in unusual circumstances and simply reasserted a prerogative of the state which it had always possessed in theory, it seemed so strongly to contradict postwar practice that it was destined to provoke much protest.<sup>56</sup>

A further means of potential ministry influence was through the chancellor, who was to be in charge of "financial and personnel administration" as distinct from academic affairs. Compared to Discussion Bills I and II, the cabinet bill took greater pains to make the chancellor an integral "organ of the university" and to soften the line of demarcation between academic and financial affairs.<sup>57</sup> While in Discussion Bill I the chancellor had been called Kurator--a term with uncomfortable connotations of nineteenth century Prussian ministerial tutelage--and

was to be given a "state administrative office" (staatliche Verwaltungsbehörde) within the university, the government version omitted such an office and stipulated that the chancellor should be appointed by the government not merely after "hearing the opinion" (nach Anhörung) of the university senate, as in Bill I, but rather "in consultation with" (im Benehmen mit) both senate and rector.

In the government bill, the chancellor was made a member of the administrative council, which was also to include the rector as chairman, three full professors, one Nichtordinarius, and one student. Significantly, this council was now given full power of decision in important matters, whereas previously it was to have served merely as an advisory body to the chancellor. Nevertheless, a phrase added to the cabinet draft made the chancellor "responsible for carrying out the instructions of the education minister" in non-academic matters; moreover, the chancellor was to have a suspensive veto over decisions of the council which he believed to be illegal or "inappropriate" (unzweckmässig), after which the matter could be decided by the minister.<sup>58</sup> These provisions obviously tended to cancel out the effect of making the administrative council superior to the chancellor and therefore represented a potential threat to university autonomy.

Within the internal structure of the university, a second major intent of the cabinet draft was to strengthen the administration of both the university as a whole and the faculties. Here the administrative council and the chancellor were to play a key role in ensuring that financial and personnel decisions would be made with "more combined expertise [Sachverstand]" than hitherto, guaranteeing "smooth execution

of the administrative process", in the government's words.<sup>59</sup> A functionally efficient administration was clearly the aim. However, academic affairs were still divorced from the chancellor's responsibility, perpetuating the traditional dualism between academic and state administrative affairs. The rector, as the academic head of the university, was the only official who could potentially have brought some unity into administrative policy-making. Although the government did indeed stress his "new function ... as coordinator of all academic affairs and pacemaker for the further development of the university",<sup>60</sup> he was still to have no direct supervisory authority over the chancellor. The only institutional changes envisaged were to lengthen the rector's term from the traditional one year to four, and to permit him to take part ex officio in the meetings of the faculties and their committees. Although the proposal for a four-year rectoral term was anathema to the professors, who feared both the burden that such a term would impose on productive scholars as well as the power which capable administrators might amass, the recruitment process was not altered. The rector was still to be elected essentially by the Ordinarien from among their number, despite participation by students and junior staff, and so the respected scholar who would stand symbolically, as primus inter pares, for the eminence of his colleagues and the university would probably continue to be chosen over the aspiring administrator-scholar who might break out of that role.

An analogous concern with functional efficiency was shown by the third main aim of the government's bill: to reduce the time taken by students to get their degrees and (by implication) to lower the

drop-out rate.<sup>61</sup> The faculties were made explicitly responsible for drawing up comprehensive programs of study, providing an adequate range of lectures, seminars and other instructional offerings, and seeing that the students "as a rule" finished their studies within the regulation period. Counselling sessions were to be held regularly, especially for first-year students and those preparing for examinations. These measures--although by no means entirely novel--went beyond the 1962 recommendations of the Science Council, which we mentioned above, and in fact pointed in the direction of the Council's 1966 proposals, which involved a three-stage course of study with time limits and examinations concluding each stage.<sup>62</sup> However, still in deference to the hallowed ideal of Lernfreiheit, nothing in the government bill was obligatory. Students were in principle still free to take their examinations when they pleased; counselling was to be optional. Even so, the Hessian students protested these provisions, and they were marginally weakened in the final version of the law.

The fourth important aim of the draft, and the final one which we discuss here, was the democratization of university governance. However rudimentary the specific provisions were, they anticipated the democratic ideology which was to emerge in full force after 1967, and they did recognize the existence of different groups and interests within the university more explicitly than any German statute had previously done. In each university, the Nichtordinarien and the assistants were to form councils to discuss their own affairs;<sup>63</sup> the students, who had long possessed their own organs, were now even granted the status of a quasi-independent public corporation.<sup>64</sup> All three groups were to be

represented in the university senate and the faculties, as well as their subcommittees, although the students were to be excluded from a lengthy list of matters, including appointments at all levels, all examinations, personal affairs of the staff, and elections; this was to become known as the "negative catalogue".

Despite these provisions, it was tacitly accepted by all sides that the Ordinarien would retain a large majority in all organs. Moreover, they were to continue as directors of their research institutes, with no provision for participation by assistants or students at that level. Therefore, since student participation in the senate had already been widely practiced,<sup>65</sup> the net effect of the bill was to admit assistants to the senate and both assistants and students to the faculties, leaving the institutes virtually untouched. Thus the traditional character of the measures is evident, and it is significant that at no point did lack of participation at the institute level receive strong criticism—not even from the students.

#### Ministry Consultations with Rectors and Professors

The consultations which finally led to the government bill began in September 1964, when Minister of Education Schütte presented a four-page list of "guidelines" for his draft to the rectors and the student spokesmen in separate meetings, setting a pattern for the rest of the talks.<sup>66</sup> Schütte made a point of announcing his plans publicly, first in the state parliament early in September, and then in a press conference at the end of the month.<sup>67</sup> Clearly he now intended to seek a greater degree of public discussion than he had thought desirable in the earlier phase, and this was symptomatic of a gradual trend towards

generally wider involvement of groups and the public in questions of higher educational reform, which culminated after 1967.

The minister's course of separate consultations with professors and students was probably the only practicable one. Although the students would have preferred to be included with the others, the rectors continued to shy away from recognizing them as full-fledged partners, while rejecting categorically their demands for corporate status within the university and broader rights of participation in governance. Numerous overtures on the part of the students, from 1962 on, remained unanswered or drew negative responses from the rectors.<sup>68</sup> The latter did not meet with the students until January 1965, and that meeting did not succeed in reconciling their differences.<sup>69</sup> The students were also excluded from most discussions of the legislation in the university senates, for it was defined as a "non-student matter" restricted to deliberation by the professors.

As we noted, the rectors saw themselves as the legitimate spokesmen for the university as a whole and claimed the prerogative of guiding the universities' negotiating strategy. They questioned the minister's right to consult directly with the students. Above all, they wanted the universities to maintain a unified stand, and therefore they urged other groups to refrain from acting independently. With the exception of the students, they succeeded. The assistants made no significant attempt to develop a comprehensive position on the bill, nor did the Nichtordinarien, although certain representatives of the latter evidently did urge taking their case directly to the minister.<sup>70</sup>

Among the rectors and their professorial colleagues, a disagreement

on strategy flared up in February 1965 on the question of whether to press for a framework law or accept the ministry's more detailed bill as a basis for discussions. The main advocates of drafting a short framework law as a counterproposal were the spokesmen for the Darmstadt Technische Hochschule, as well as the jurist Rudolf Reinhardt from Marburg. In their view, such a draft would serve to present the universities' ideas most forcefully, as well as to assert effectively the principle of university autonomy.<sup>71</sup> However, in the end the adherents of presenting point-by-point alternatives to the ministry bill prevailed, led by the Frankfurt jurist Walter Mallmann.<sup>72</sup> They felt that the minister could not be expected to accept an entirely new and shorter bill at that point in the talks, and that such a course would mean abandoning any real hope of further influencing the shape of the bill.

The central role played by professors of law was characteristic. German politics generally tends to be strongly legalistic in style, seeking to regulate social institutions and processes through detailed regulations and legislation. In this case, given the wide consensus concerning the continued validity of the traditional mission and structure of the university, the government reformers necessarily worked from the complex and amorphous body of university law as it had developed over decades, partly through codification but mainly through customary law. These factors enhanced the influence of the academic jurists--especially those with particular expertise in university law.<sup>73</sup> They served both as advisors to the rectors and--partly under the guidance of the rectors--as consultants to the ministry and (later) to the legislators.

The rectors met frequently in this period, sometimes formally as the Hessian Rectors' Conference (HRK), but usually including other professors, particularly the law experts, and occasionally the university administrative officers. When they formed a fifteen-person working group with the ministry during the fall of 1964, the rectors preferred to stay out in order to avoid commitment to its conclusions, and the majority of the five professorial members were jurists. Two administrators rounded out the university side, while the government was represented by the education minister and five of his officials, plus one official each from the ministries of justice and finance.<sup>74</sup>

Since the discussions with the ministry appeared to be going well, from the rectors' point of view, their main tactic, up to the publication of the actual government bill in May 1965, was to avoid any public statements in order not to risk adversely affecting the consultations. In December the rectors went to some lengths to dissuade the national professors' association (Hochschulverband) and its newly founded Hessian branch from launching protests against the legislation. By January, the rectors were in contact with the Frankfurter Allgemeine (FAZ), a national daily with conservative political leanings; it promised to publish an article on the situation, at a time to be determined by the rectors, but they wanted to wait.<sup>75</sup> The text of Discussion Bill II, which drew on the deliberations of the working group and was circulated in the latter part of January, appeared to confirm the wisdom of this course, for it made a number of concessions to the rectors' demands, most notably by reducing the chancellor's dependence on the state and providing the option for a two year rectoral term (as an alternative

to five years). This bill served as a basis for extensive discussions in Arnoldshain in February, the last such meeting between the universities and the ministry before the full Hessian cabinet took up the legislation in March and April. Before we turn to these events, we must briefly discuss the students' role.

#### Consultations With the Students

From September 1964 to March 1965 there were at least six meetings between the student spokesmen, led by Hans Joachim Pfaffendorf of Marburg, and Minister Schütte with his officials. The talks proceeded harmoniously and constructively, and by January "extensive agreement, at least in all questions concerning the student body," had been reached.<sup>76</sup> The student spokesmen worked from detailed position papers responding to the successive bills;<sup>77</sup> each time the students went further beyond questions of their own status to deal more extensively with wider issues, so that by the government bill they commented on nearly three-fifths of the paragraphs. The papers were adopted with negligible opposition at the regular meetings of the state student association, which took place roughly every two months. Naturally, the leaders took an active part in formulating the proposals; most influential was Pfaffendorf, the student association's state chairman. In the case of the government bill the Marburg student parliament, under Pfaffendorf's tutelage, adopted initial counter-proposals, which were accepted by the students at the state level with only minor changes.

Altogether there was little evidence of dissent from or dissatisfaction with the course followed by the student leaders. They played the game of consulting with the ministry as earnestly and as constructively

as the professors, with a clear mandate from their constituency and with considerable expertise and experience. Pfaffendorf, in particular, had been representing the students in the discussions since 1962, when he took part in the summer meetings at the Hessian ministry.

The Government Bill: Protest and Acceptance

The rectors and their colleagues regarded the meeting in Arnoldshain as their last opportunity to impress their views on the minister before the bill went to the cabinet. However, much controversy ensued regarding what (if anything) the minister committed himself to at the meeting. The rectors felt that the talks went well; afterwards, they prepared a revised version of the bill from their perspective, maintaining that the minister had acquiesced to essentially that version. These "aids to formulation", as the minister himself dubbed them,<sup>78</sup> were described by the Marburg rector as "a compromise which was certainly not easy for the professors, and which because of its extensive concessions aroused the ire of many of their colleagues in the universities".<sup>79</sup>

Several weeks after the Hessian cabinet's initial consideration of the bill on 16 March, the HRK took note of rumors that the cabinet had deviated from the minister's "pledges" in February. The rectors thereupon requested a meeting with Minister President Zinn, which took place on 26 April, the day before the final cabinet deliberations, with Schütte also present at Zinn's suggestion. A brief record made by the rectors indicates that the meeting passed "without significant discord".<sup>80</sup> In view of the universities' sharply negative reaction to the government bill when it was made public two weeks later, there was

evidently a failure of communication at the meeting. If the impending changes had been fully described to the rectors, the meeting would have been highly discordant. Clearly, relationships between the rectors as spokesmen for the universities and the state executive were not conducive to easy communication.

In Minister Schlütte's view, he had promised at Arnoldshain no more than to consider the universities' views in formulating the next draft, and to communicate them to the cabinet. In both a constitutional and a practical-political sense, the cabinet clearly had the prerogative of further amendments before sending the bill to parliament.<sup>81</sup> Indeed, the cabinet's deliberations were by no means perfunctory. As we shall see, there is abundant evidence that the education minister was in fact favorably disposed to the universities' demands ("universitätsfreundlich"), and it is therefore likely that at this point he was forced to make concessions to those members of the cabinet who were more hostile to them.<sup>82</sup> The minister president had taken a strong interest in the legislation all along, and it is possible that he influenced some of the changes.

In political terms, the position of the rector was the most volatile single aspect of the bill. The cabinet insisted on a four year term, although Minister Schlütte had been willing to concede a two year term as an option, under the condition that the rector serve two years before his actual term as rector designatus and two years afterwards as prorector, so that a triumvirate could share administrative functions at all times. There was considerable sentiment in the cabinet for a chancellor who would be more beholden to the minister than Schlütte

had in mind; however, although the chancellor's right to suspend "inappropriate" decisions of the administrative council, together with his "responsibility" for executing ministerial instructions in fiscal matters were probably provisions insisted on by the cabinet and did give the government the potential means for intervening in non-academic affairs, they were counter-balanced to some extent by the administrative council's elevation from an advisory to a decision-making body, which had been a demand of the rectors.<sup>83</sup>

Publication of the government bill in early May precipitated a storm of outrage from the professors, together with more cautious positive reactions from the students and other quarters. The professorial opposition found its most forceful expression in statements adopted unanimously by the councils of the four Hessian universities.<sup>84</sup>

All deplored Schütte's handling of the entire matter and accused him of betraying their trust. The professors had cooperated in the expectation that their views would be taken seriously and find at least partial acceptance in the bill; but no: "The draft follows solely the opinion of the Hessian minister of education"; "through this procedure, our confidence in [him] is seriously shaken".<sup>85</sup> Clearly, the rectors had felt that they were negotiating with the minister, with both sides making firm commitments, while from the government's point of view the talks had much more the character of consultations.

The professors' main substantive objection was to the "undisguised dirigistic tendencies" of the bill.<sup>86</sup> For one thing, as we have seen, it regulated aspects of university structure which traditionally were to be left to the universities' statutes.<sup>87</sup> Furthermore, the chancellor

was seen as a potential arm of the state, while other provisions also seemed to foster ministerial influence on internal academic affairs, such as the minister's explicit right to name his own candidates to vacant chairs and his right of access to university files. The stronger position of the rector also provoked fears that he might attempt to regiment his colleagues. Finally, the professors felt that the students had been conceded too great a degree of participation in university affairs.<sup>88</sup> In sum, the universities promised the bill "the sharpest possible resistance".

The bill attracted much attention elsewhere in the Federal Republic, together with equally sharp professorial criticism. A number of universities made public statements echoing the themes we have just covered.<sup>89</sup> The national Rectors' Conference, after receiving express assurance that the Hessian rectors wanted a resolution and would hold to it, adopted one at its plenary session in July 1965.<sup>90</sup>

The professors, although virtually unanimous in their opposition, had relatively minimal support from other quarters. The press tended from the outset to back the government, while giving considerable space to professorial essays criticizing the bill. The main non-university voice to make itself publicly heard at any point was that of the Hessian branch of the national school teachers' union, which took a rather ambivalent stand initially; it favored a more assertive state role, student participation, and attempts to make the courses of study more efficient, while criticizing inadequate involvement of the Nichtordinarien and the assistants and the longer term rector.<sup>91</sup>

As unanimous as the professors were,<sup>92</sup> their claim to speak for the entire university was questionable. The Darmstadt student magazine argued as follows:

The student bodies of the four Hessian universities, as an essential constituent of the universities, have welcomed and supported the bill, with the exception of a few points. The present statutes of the universities provide for the participation of student representatives in the university self-administration, when "affairs of student concern" are discussed. The university law is indisputably a matter of student concern. Nevertheless, the senates held their deliberations on the law without student representatives.... therefore the senates and rectors cannot speak in the name of the universities, but only in the name of the professors.<sup>93</sup>

Notwithstanding such declarations, the students and professors shared a considerable consensus on the bill, which was to become more evident in the course of the legislative deliberations. The one area where their views diverged significantly was, quite naturally, the question of the students' status and involvement in university affairs. The students welcomed the democratization of governance promised by the bill, although they still desired greater involvement at the institute level, as well as a reduction in the number of topics for which they were to be excluded from participation (the "negative catalogue").<sup>94</sup>

In their main criticism, the students--concurring with the professor and reasserting the traditional ideal of Lernfreiheit--warned against the bill's "regimentation of the course of study [and] its maximum length.... For independence and responsibility for one's own course of work are essential aspects of a university education".<sup>95</sup> On other questions also, the students shared the professors' traditional views, although they were for the most part more reformist in their approach. For example, the students wanted the chancellor's powers limited and clarified but showed no great fear of the potential dirigistic influence

of state officials. They agreed with the professors that direct "coordination" of research should not be a prerogative of the faculties. As for the rector's term, they accepted the government's view that it should be lengthened, but thought that three rather than four years would be ideal.

Despite this substantive agreement on most issues, relationships between students and professors remained tense. The sharpest clash occurred in Marburg, after the chairman of the student committee (AStA) made a statement to the press in full support of the government bill. In a subsequent speech before a student audience, the Marburg rector protested this stand and criticized the bill at some length. He questioned the student spokesmen's capacity to deal with "such difficult questions as those of university policy", noting with irony that the "certainty of judgement" expressed in the chairman's press release seemed "remarkable".<sup>96</sup> Moreover, the rector cast doubt on the chairman's formal legitimation to speak for the students and on whether his views accurately reflected those of the majority. The Marburg student parliament gave full endorsement to its chairman's actions, deploring the rector's "disregard of the mandate given by the student body to parliament and student committee [AStA] and thus his disregard of one of the most fundamental democratic principles".<sup>97</sup> Evidence on whether the majority of the student body in fact favored their spokesmen's stand on the bill is ambivalent. It seems likely that the bulk of the students were somewhat apathetic and not very well informed, especially at the outset.<sup>98</sup>

This episode, exceptional though it was, clearly illustrates the basic underlying tension between professors and student spokesmen in the

traditionally-oriented post-war period. The latter normally accepted their role as well behaved junior trustees of the traditional university ideal.<sup>99</sup> The occasional student representative who spoke out for moderate reform, like the Marburg chairman in this instance, risked attack from the professors for betraying the true interests of both the university and his student constituents but could usually count on little help from the generally apathetic rank-and-file students. However, for all the sharp rhetoric which the Hessian bill provoked, both sides continued to share a basic commitment, of varied content and intensity, to the Humboldtian legacy. This was to greatly facilitate achievement of a compromise as the bill reached the chambers of the Hessian legislature.

#### The Legislative Process: First Reading

Schütte, as the responsible minister, opened the debate on the first reading, which took place on 2 June 1965.<sup>100</sup> He was followed by spokesmen for the parliamentary groups (Fraktionen) in order of their size:<sup>101</sup> SPD, CDU, FDP and the small GDF/BHE.<sup>102</sup> A brief talk by another member of the FDP and a rejoinder by Schütte concluded the deliberations.

The rhetorical clash between the government side and the opposition (CDU and FDP) was sharp. The minister and Ruth Horn, spokeswoman for the SPD, defended the government bill as a genuine, if modest, step toward effective reform. Schütte concluded on a familiar and conciliatory note: "The problems of university reform are difficult and multifarious: in the last analysis only the universities themselves can solve them and implement the solutions. But on that path much depends on the help of the state. The bill aims to offer this help". As they did repeatedly, the government side disclaimed any desire for increased state control or for a dirigistic academic administration. However, Schütte echoed

the students in stressing that a stronger rector would enhance the autonomy of the university. Mrs. Horn emphasized the bill's flexibility, while also suggesting that certain features might have to be revised, such as the position of the chancellor.<sup>103</sup>

The speaker for the CDU, Hanna Walz, attacked the bill vigorously, echoing many of the professors' criticisms. Above all, she saw "massive possibilities of intervention in academic self-administration as guaranteed by Article 60 of the Hessian constitution".<sup>104</sup> Besides protesting such provisions as the supervisory and information rights of the minister, the position of the chancellor and restrictions on the academic administration, she asserted that even the rector was convinced as potentially responsible to the minister.

#### Committee Deliberations

Nearly six months after the first reading the legislative Committee on Cultural Policy (Kulturpolitischer Ausschuss) took up the bill. Its deliberations extended from November 1965 to early May 1966, in a total of 14 meetings averaging four hours in length.<sup>105</sup>

At the outset, Minister Schütte reviewed the history of the legislation and outlined the main points at issue, especially the provisions for the rector and chancellor. Most importantly, he reaffirmed a willingness to consider changes to meet the universities' demands, which he had expressed publicly the previous month.<sup>106</sup>

The committee proceeded straightforwardly, with none of the partisan controversy which had prevailed in the June plenary session. Following Schütte's introductory remarks, a paragraph-by-paragraph, so-called "cursory" review of the bill took up the first three meetings, which

in itself tended to focus attention on details rather than general issues.<sup>107</sup> Schütte and the ministerial officials present throughout were most active at this stage, frequently engaging in brief dialogues with the legislators and even each other. The officials were often asked (especially by the minister) if a particular formulation was appropriate. Their counsel was not by any means always taken, but the combination of their technical (primarily legal) expertise and knowledge of the bill's history clearly restricted the legislators' range of options. Similarly, at this stage it was already evident that the extraordinarily painstaking and erudite commentary on the bill prepared by the jurist Walter Mallmann would play a considerable role in the discussions.<sup>108</sup>

At this early stage only some half-dozen changes were agreed on, mainly informally, but they are revealing. All involved specific provisions of small practical consequence but considerable symbolic importance, the deletion (or addition) of which had been demanded by one or more university groups, with no counter-demands. Thus in each case the legislators could yield to a certain consensus--which they shared themselves--and placate the universities at no political risk. For example, the italicized phrase was omitted from the clause: "academic matters are matters of self-administration, as far as legislation does not determine otherwise".<sup>109</sup> Two cuts excised the chancellor's responsibility for carrying out the minister's instructions and his suspensive veto of "inappropriate" decisions.<sup>110</sup>

This sort of alteration, as one legislator remarked, simply tempered some of the harsh language of the bill while hardly affecting its substance. During the second reading, an SPD spokesman observed

"that in the committee deliberations certain passages were added . . . which we actually felt were superfluous, because the questions involved are dealt with in general provisions of public law. However, we added [these clauses] in order to clarify something which was desired from outside".<sup>111</sup> Such outside pressures, as we have seen, came almost exclusively from the university groups, urging a more traditional law. Marginal changes of this sort did in fact serve altogether to enhance formally the traditional orientation of the legislation and to blunt further its mild reformist thrust.

#### Hearings

Following these initial deliberations, the committee devoted two sessions in January 1965 to closed hearings. Testifying were the rectors with their jurist advisors (including Mallmann and Reinhardt), the administrative directors and the students.<sup>112</sup> As the new chairman of the HRK, Walter Rüegg<sup>113</sup> gave a skillful and persuasive opening presentation on behalf of the rectors.<sup>114</sup> Gone was the polemical rhetoric of the early summer; in its place was a firm affirmation that the universities fully appreciated the need for reform but that only they could properly initiate reforms and carry them through. Rüegg emphasized that the universities must function through cooperative collegiality as their fundamental structural principle. Provisions giving the chancellor, rector and deans authority to oversee the actions of their colleagues and other organs were objectionable above all because they tended to institutionalize conflict within the university. Rüegg made a distinct effort to speak for the university as a whole, including the Nichtordinarien and the students. The rectors had recently

met twice with the students and the latter had indeed accepted a considerable portion of the rector's proposal.<sup>115</sup>

In the ensuing discussion, the professors expanded on certain points with considerable frankness. Regarding the rectorate, they doubtless sensed that the committee was disposed to accept other models and strongly urged that the triumvirate form with a one-year term be included as an option. In support of it, they used the analogy of the large business enterprise governed by a collective board--an interesting attempt to clothe the traditional concepts of collegiality and honorific service in functional garb. They noted that any member of the triumvirate would have served as a dean and on the senate or administrative council, thereby acquiring experience which would compensate for the essentially part-time nature of the body.

The following day the administrative directors and the students gave their testimony. The administrators confined themselves to their own area of expertise and concern: the structure of the administrative council, the Kanzler, and the non-academic administration generally. They expressed their overall approval of the bill but suggested a number of changes to insure the independence of the chancellor, which they saw as threatened more by the universities themselves than by the state.

The students' testimony was also concise, although it ranged more widely. On the points where they agreed in general terms with the professors, the students usually preferred Mallmann's formulations to those of the rectors' paper. On the position of the student body--especially participation in governance--they favored the government

bill, with certain minor amendments, most of which the committee was to accept in the end. They were clear on the rectorate: they urged a three-year term and warned expressly that if the universities were permitted the option of a shorter term they would choose it. Such frank realism was rare in the deliberations, which with characteristic legalism treated all options for the rectorate which the law might include as equally likely to be selected by the universities. Nonetheless, the rectors had made their preference for the triumvirate form with one year terms clear enough, and the legislators could have had few illusions about the likely outcome. Their incorporation of a triumvirate option into the law in its final form must therefore have meant that they were unwilling to provoke the universities' resistance by insisting on a longer term.

All sides were on their best behavior for the hearings. The testimony of the groups was business-like, objective, and conciliatory. All of them--even the rectors--accepted the government bill as the basis of the discussion; they raised few larger issues in dealing with its provisions. Insofar as broad concepts did enter the discussion, they derived essentially from the traditional view of the university.

#### Revising the Bill: Flexibility, Legalism and Consensus

The deliberations continued in this style as the committee came to the business of preparing viable revisions to be submitted for the second reading. From this point on, however, the parties did begin to take more definite stands, with their respective working groups (each consisting essentially of the party's committee membership) taking the active role. By the end of January, for the first two sessions

following the hearings, the SPD working groups prepared preliminary proposals as the basis of discussion; by the next four meetings, in March, these had taken more definite shape. On each successive paragraph-by-paragraph consideration of the bill, the points on which agreement could be reached were determined informally; no formal votes took place until the voting on the second reading version. In this way the area of consensus was steadily but unobtrusively extended. However, no such decisions were final until confirmed by the formal vote, and some were in fact revised.

The flexible style of the committee's deliberations was not fortuitous, for frank discussions of procedure took place on several occasions.<sup>116</sup> Flexibility was viewed as facilitating the achievement of consensus; it meant that the committee members could participate freely in discussions without necessarily being bound to their remarks. The members were entrusted by their parliamentary groups with authority to conduct the committee negotiations much as they saw fit. The prevailing practice was for each party working group to prepare its proposals at a given stage and submit them for discussion in the full committee before actually receiving formal approval from the full parliamentary party.

A further basic characteristic of the deliberations, also a means of facilitating consensus, was their confidentiality. The working groups could explore compromises within the committee, before receiving the backing of their party, without fear that the proposals would reach a wider circle. Of the two breaches of confidentiality which came to the attention of the committee during its work on the law, one deserves

particular attention, for it reveals a good deal about the members' more general attitudes about relations with interest groups.<sup>117</sup> In this instance, a member reported a telephone call from an individual who was familiar with the working groups' proposals. Amid general expressions of indignation, others, including Schütte, conceded that they had discussed the proposals with university spokesmen but stressed that they regarded such contacts as a private matter, solely for their personal information. The breach of convention in this case appeared to lie in the fact that an outsider had gained confidential material which he had then used on his initiative in further contact with another legislator. Relations of this sort, regardless of whether they were intended to exert pressure on the committee, were clearly felt to have no legitimate standing in its proceedings.

The students, led by Pfaffendorf, did continue meeting regularly (averaging at least once a month) with Schütte and his officials; they also met with SPD members (somewhat less often) as well as a few times with CDU and FDP. The rectors' contacts appear to have been chiefly with the government, but they were less frequent and more formal.<sup>118</sup> Despite such meetings, the committee's legalistic attitude explicitly encouraged formal written petitions or oral testimony at hearings as the only legitimate channels for presentation of group demands. In actual fact, due also to the care and detail with which the key groups -- and above all Mallmann -- prepared their position papers and formal testimony these did carry great weight and left little leeway for personal lobbying.

The confidentiality and flexibility of the committee's proceedings served to facilitate the attainment of consensus. But at the same time,

obviously, the entire procedure was founded on a considerable degree of consensus to start with. For if the parties had disagreed sharply on the general shape the law should take, as was to be largely the case in state university legislation after 1968, the working groups would have been relatively closely tied to party guidelines, and co-operative procedures in themselves would have hardly sufficed to bridge the gap. But in the 1965-66 period traditional university ideology was still sufficiently dominant to be implicitly accepted by all those involved with the legislation, and consensus can therefore be seen as both a precondition and an outcome of the legislative proceedings.

The pervasive but restrained involvement of Minister Schütte and the civil servants in the committee's proceedings is entirely consistent with this view. They played the part of informers, interpreters, facilitators and formulators. They gave information about the history of the bill, interpreted its provisions, facilitated agreement on certain amendments, and provided precise formulations for others. It could not be said that the officials served as mediators, for there were no sharply opposed positions to mediate between. Nor did they forcefully present the government's view, as they were to do four years later when proposing revised and much more detailed legislation.

Indeed, the quite unspecific nature of much of the bill was itself a consequence of the dominant consensus. The legislators did not fully satisfy the universities' demand for a limited framework law, but they did leave them much flexibility. This restraint was

not simply a matter of course, for, as has often been asserted, German political style is highly legalistic, reflecting a "desire to pre-regulate the entire future by means of legislation, [and] to foreordain all eventualities through detailed and comprehensive, preferably unalterable, regulation."<sup>119</sup> However, university law has traditionally been one of the least codified areas of German law, owing at least partly to the firmly rooted character of traditional ideology, which placed the universities under the mantle of autonomy and most aspects of their structure beyond debate. Since consensus on the continued validity of that ideology still prevailed, the Hessian legislation went into detail only in the few areas where the government wanted limited reforms, such as professorial appointments, the powers of the chancellor, and regulation of the course of studies. In a number of cases, as we have seen, provisions were adopted in order to placate the universities, with the frank recognition that they would make little substantive difference. For example, one clause stipulated that the chancellor, who was to handle the day-to-day administration of academic affairs, must follow the instructions of the rector in that area.<sup>120</sup>

An additional reason why the law did not need to go into great detail was that the universities were to be required to fill it out by revising their statutes. Yet this and other provisions of the law contained the seeds for conflict, and here its lack of specificity was to prove serious indeed. The new statutes were to be enacted by the organ responsible under the old statutes of each university, with the sole provision that an understanding with the three non-professorial groups--Nichtordinarien, assistants and students--was to be reached

as to how many representatives of each would be included. As we shall see, at two of the four Hessian universities such an agreement proved very difficult to attain and in the end one of them (Frankfurt) gave up entirely.<sup>121</sup> Furthermore, the democratization provisions of the law did not specify the group composition of the other decision-making organs either. Since virtually no one during the deliberations made statements about the quantitative extent of student and assistant representation the tacit assumption was that it would be relatively minimal, perhaps amounting to two seats each in a senate of 15 to 25 members, in accordance with prevailing practice in the minority of universities which already accorded such representation.<sup>122</sup>

As has already been noted, the committee held formal votes only on two occasions, on the versions of the bill to be presented for the second and third readings respectively. In each case, paragraphs and subsections of paragraphs were first brought up individually, followed finally by the entire text. All of these votes took place strictly along party lines.

Tabulation of the two series of votes by paragraph provides a rough measure of the committee's progress towards consensus on a final version. On 17 March 1966, voting on the version for the second reading, 33 per cent of the paragraphs were opposed by either CDU, FDP or both, while in the vote preparing for the third reading (5 May) opposition dropped to 4 per cent. Abstentions increased somewhat from one vote to the next, from 6 to 10 per cent, while the proportion of paragraphs accepted without opposition or abstention jumped from 61 to 86 per cent.<sup>123</sup> Overall, both CDU and FDP abstained in committee on the second reading

version, while on the third reading version CDU abstained and FDP voted in favor.

#### Enactment of the Law

The second reading was business-like and conciliatory in tone.<sup>124</sup> Mrs. Horn first reviewed the main changes in her role as rapporteur for the committee on cultural policy. Then, speaking for the SPD, she brought out the parties' role in the committee's work, stressing the SPD's initiative in making proposals and outlining the main points on which it had accepted the CDU's demands as well as those on which they still differed. She also reviewed seven points recently raised publicly by the rectors<sup>125</sup> and the concessions made on all but one of these (student participation). For the CDU, Mrs. Walz conveyed her party's satisfaction at many of the changes made and enumerated the more important formulations which the CDU still objected to. The rest of the debated was routine; the minister spoke only at the end, covering issues on which there was still disagreement. In the vote on the second reading, the CDU abstained, and the FDP, somewhat surprisingly, voted in the negative. The bill was returned to committee to be prepared for the third and final reading.

That reading took place on 11 May 1966. It was perfunctory, lasting less than an hour and a half. By then the result was a foregone conclusion: incorporating a few additional changes agreed on in committee, the bill was voted unanimously.<sup>126</sup>

Notwithstanding the FDP's negative vote in plenary on the second reading, it provided considerably less opposition than the CDU, to judge by the votes on individual clauses in committee. This is exactly what

one would expect from the FDP's relatively liberal orientation to university policy in other states. It seems clear that both parties, but particularly the CDU, were using their opposition on the second reading version to try to extract concessions from the SPD in the final round. In this they had little success. Among the five main items still objected to by the CDU in the debate on the second reading, a compromise was finally found on only one (the appointment of professors), while the others remained unchanged; even so, the CDU tempered its stand on all but one of the five points (the chancellor's powers) in the final committee vote. Of the total of 30-odd clauses which the CDU and FDP had rejected in the committee vote on the second reading, the SPD made concessions only on some half-dozen. Nevertheless, CDU and FDP tempered their opposition on most of these as well. Altogether, one can only conclude that CDU and FDP maintained their opposition as long as they did in large part out of tactical considerations.

It cannot be overstressed how narrow, in formal terms, was the range of alternatives considered during the debate on the law, especially in relation to the structural changes which have been implemented since, in Hesse and elsewhere. In the final text of 1966, the government achieved most of what it wanted, after numerous minor concessions. The chancellor was established, together with the administrative council, enhancing the continuity and expertise of administration within the university and giving the state a modest instrument of intervention in case of need. The law specified, and thereby limited, the ministry's appointment powers. The provisions designed to get students to complete their studies more expeditiously were only marginally diluted, but they depended so much

on voluntary effort by the students and the universities that their likely effect was nil. The faculties and academic senate were opened to assistants and students, but the extent of participation and the mode of its implementation were left vague. The most dramatic concession the universities achieved was the option of a rectoral triumvirate with one-year terms, which naturally soon became the first choice of all four Hessian universities as they set about the business of drafting new statutes.

Statute-Making in Hesse, 1966-68

Of the four Hessian universities, Darmstadt and Giessen completed their new statutes by the summer of 1967. Delays in Frankfurt and Marburg were compounded as student unrest increased rapidly in the fall and winter of 1967-68. In each case, the major hindrance was disagreement on the proportion of seats to be assigned to each group in the statute-giving body. Marburg finally enacted its statutes in late 1968, but Frankfurt never finished, blocked by a deadlock between the students, who demanded 33 per cent of the seats (one-third parity) and the professors, who were willing to concede only 20 per cent.<sup>127</sup>

The new statutes of Darmstadt and Giessen were quite traditional in substance. The Ordinarien still dominated the decision-making organs, and the triumvirate form of executive was adopted, which was now frankly admitted to be closest to the traditional rectorate. Frankfurt and Marburg also favored the triumvirate form, after some debate on the relative merits of the presidential alternative. It was feared, as a Marburg professor put it, that the presidential system "would mean a complete transformation and total alienation of university structure"; in contrast,

he felt, the triumvirate embodied the university's principle of "total collegiality".<sup>128</sup>

#### Student Unrest and Ideological Conflict

Despite its weaknesses, the Hessian Law of 1966 could well have distinctly improved the functioning of the universities, had conditions been more favorable. That it failed was due to events transcending Hesse. On 2 June 1967, as a largely peaceful demonstration in Berlin against the visiting Shah of Iran was being forcibly dispersed, a student was shot (probably accidentally) and killed by a policeman. This event precipitated the spillover of student protest from Berlin, where it had been building up for several years, to the rest of the Federal Republic. Together with broader changes in the political climate, this made possible the astoundingly rapid coalescence of new, divergent ideas about the university's role and structure.

It was West Berlin that first spawned a socially-aware student movement in the Federal Republic. Its Free University had been born of political strife in 1948, founded by students who rejected the regimentation of the Humboldt University in the Eastern sector of the city. Berlin's sensitive political situation fostered a remarkably high level of political interest and activity among the students. In 1964 83 per cent of a sample of Free University students claimed to have participated in meetings or demonstrations.<sup>129</sup> As long as this activity took place in the cold-war, anti-communist spirit which pervaded the founding years, it aroused no resistance from university or city authorities. But from the end of the 1950's on, the student organs gradually began reassessing their political role and that of the university; inevitably they came into conflict with the academic authorities.

By the time of the first broad confrontations in 1965-66, a wide spectrum of the Berlin students had come to see the university crisis--linked above all to its overly hierarchical authority structures--as mirroring the gap between ideal and reality in West German society as "restored" after 1945. In June 1966 a combination of issues, including the right of junior staff and students to political activity and the attempted imposition of a time limit on the course of study in medicine and law, led to a sit-in at the Free University, the first in Germany. Some 3,000 participating students adopted a resolution which read in part as follows:

What is happening here in Berlin is a conflict, just as in society, whose central object is neither a longer course of study nor more vacation, but rather the dismantling of oligarchical rule and the realization of democratic freedom in all realms of society.<sup>130</sup>

A year later the Shah came to Berlin, and the death of the student Benno Ohnesorg at the hands of the police provided the spark for a nation-wide student movement.

The unrest spilling out from Berlin in the summer of 1967 fed on a more general political malaise. In 1966 the SPD had climaxed its long trek towards political acceptability, which had led it from principled socialist opposition to pragmatic, reformist criticism of the market economy, by entering a "Grand Coalition" with the CDU. This was seen by many liberal and progressive intellectuals, including students, as a betrayal by the SPD of its role as the main political advocate of a more egalitarian German society. A concrete confirmation of the progressives' fears was the SPD's active involvement in legislative deliberations leading finally to enactment in June 1968 of the "emergency

laws", which established extensive powers to declare a national emergency and temporarily nullify certain civil rights.

The student protestors, of course, also wanted to democratize the university. They found a convenient manifesto in a brochure published in July 1967 by student representatives in Hamburg advocating for the first time the structural principle of one-third parity. A strong desire for broader student participation must have already been latent, for although the brochure was directed initially at the local authorities, it achieved wide circulation.<sup>131</sup>

At the same time, wider realization of the interdependence of Germany's highly technological economy and the education system led advocates of measures to increase the effectiveness of the universities in serving the economy to speak out with greater force than before. Influenced by conservative projections of demand for highly skilled manpower, the Science Council revised its previous support for continued enrollment expansion, while in its study reform measures of 1966, as we have seen, it urged greater regimentation to reduce the time students spent at the university.<sup>132</sup> These efforts were given vigorous support by Gerhard Stoltenberg (CDU), who served as Federal Minister of Scientific Research from 1965 to 1969. "Even the more homogeneous society of tomorrow", he predicted, taking a characteristically economic perspective, "will be determined by individual talents and interests and specific functions. Achievement [Leistung] and competition are the selective criteria of a democratic society in <sup>an</sup> increasingly dynamic time".<sup>133</sup> Northrhine-Westphalia's rectors published recommendations for the reform of university governance involving close supervision by the state and direct orientation towards the needs of industry.<sup>134</sup>

The opposing streams fed on each other. The "technocrats", as the students called them, took the demonstrations and unrest as evidence of a "false concept of autonomy" on the part of the universities and saw them as a threat to continued economic progress.<sup>135</sup> On the other hand, the democratically-oriented students saw proposals for a more "school-like" course of study and a restructuring of administration based on principles of competence and efficiency as attempts to abolish their freedom of learning, suppress political dissent, and recruit them as mere cogs in the economic machine. A characteristic protest was the boycott by student committees (AStAs) from 11 universities of the festivities on the Wissenschaftsrat's tenth anniversary; they denounced the Wissenschaftsrat as "an ultra-political interest organ of industry, the higher ministerial bureaucracy and the Ordinarien".<sup>136</sup>

These controversies spurred a further wave of university legislation, which involved all of the states and even the federal government (from 1969 on). In Hesse, the extreme difficulties encountered by Frankfurt and Marburg in altering their structures underlined the need for more detailed legislation.<sup>137</sup> The measures enacted, including the long-strived-for federal "Framework Law" of December 1974, share a number of common features and draw in somewhat varying proportions on the different ideological orientations.

A major concern is to extend the role of the state, while at the same time not discouraging the policy-making efforts of the university. The state ministries are still ultimately responsible for professorial appointments and have exercised their right not to appoint proposed candidates in a number of recent instances, apparently in most cases

due to radical sympathies of the individuals. Moreover, the state must approve the universities' statutes, and is involved in establishing all manner of subsidiary regulations. This process has revolutionized university law, completely obliterating its character as customary law, and at the same time has increasingly ensnared the universities in a regulatory maze--legalism with a vengeance. Finally, the state is often given specific rights of intervention in university planning, which is itself a novelty. For instance, Rhineland-Palatinate gives its minister the right to suspend or cancel decisions made by university organs if they are contrary to the state's comprehensive university plan.<sup>138</sup> The Federal Framework Law requires each state to establish a multi-year comprehensive plan for higher education and to lay down general guidelines for the development plans of the individual institutions.

An analogous concern is for the effectiveness of internal administration. Nearly all state laws prescribe a presidential system for their universities, with a term of up to nine years (Hamburg); the Framework Law lays down a minimum term of four years. The powers of the president are not especially great in most cases, doubtless still reflecting the traditional fear of a strong executive; formally, the president is largely bound to the collective policy-making organs. Here the stress is on smaller bodies which can operate efficiently. Departments (usually termed Fachbereiche) have nearly universally been formed to replace the faculties, and they are subject in some cases to considerable guidance from the central university organs.

The democratization of university government is the final main thrust of the recent legislation and has understandably engendered the

most controversy. The SPD has supported a considerable greater degree of democratization than has the CDU; for example, in SPD-controlled states such as Berlin and Hesse, the university-wide council or parliament has approximated the one-third parity construction demanded by the students. In CDU/CSU states such as Rhineland-Palatinate or Bavaria, the professors (now including Ordinarien and most of the former Nichtordinarien) have a clear majority in all organs. The institutes have either been formally dissolved, or there is at least some formal provision for participation by the various groups at that level. In May 1973 the Constitutional Court ruled on the question of democratization; it found that it is unconstitutional for organs where the professors--in the sense of Hochschullehrer--do not have a majority to decide on questions of research and teaching. This violates Article 5(3) of the Basic Law, guaranteeing the freedom of research and teaching.<sup>139</sup> The SPD has attempted to conform to the ruling by defining the newly created group of assistant professors as belonging to the group of the professors or Hochschullehrer, so that they can be included in the majority required by the Constitutional Court. Whether this reasoning will stand judicial scrutiny remains to be seen.

#### Conclusion

It is clear that Hesse's head start in legislating the reform of its universities did not enable it to deal significantly more effectively than other West German states with the increasing pressures facing higher education in the late 1960s, not least the wave of student unrest. Of course, it is probable that no structural reforms at the late date of 1966 could have had much immediate effect. Nevertheless, as the student protests began, the law put Hesse in a problematic situation: it pro-

vided an arena for group activity within the universities, while the obviously limited nature of its measures gave a target for dissatisfaction, as did also the general uncertainty due to the transitional legal context. But other states were wrestling with problems of structural reform as well by this time and the Hessian experience was doubtless not untypical.

The case study has illuminated a number of tensions which had been more or less held in check by the persistence of traditional attitudes, habits and structures and which, with the breakdown of that traditional consensus, have become important sources of conflict in the universities' external and internal politics.

Internally, the major tension was that between the professors on the one hand and both junior staff and students on the other. Obviously, little that professors might have done in the years preceding 1967 could have ameliorated their relationships with other groups after that point, but the fact that they (in general) held on to their prerogatives so long and began finally to yield them so reluctantly certainly did not help to dampen conflict when it came. The new university laws have expanded the group of the full professors, thus arbitrarily reducing or eliminating some inequities. However, the newly baptized group of the assistant professors is left over, together with new classes of assistants still below them, and all of them find their status too insecure. The ruling of the Constitutional Court is limited to modalities of representation and participation, but even there ambiguities remain. Overall, however, it is probable that conflict is diminishing and that more and more departments are experiencing the benefits of routine and the opportunity to put their new structures to work undisturbed.

The endless debates on such features of the 1966 Hessian Law as the chancellor highlighted another area of political tension which has since become more critical: university-state relationships. Although the position of the chancellor has been subsumed under that of the president, in Hesse and elsewhere, the government is involved almost daily in university affairs. The new state university laws determine structures in far more detail than ever before, and the state oversees implementation of virtually every aspect. For example, the appointment of professors in fields such as the social sciences is often not a clear-cut matter, due to the competing claims of rival schools, often ideologically tinged, and the final decision by the minister whether actually to appoint the scholar placed first on the list requires weighing many considerations, not least being the likely reaction from the disappointed faction. Many of the formal decisions which the ministry must make in interpreting the law and applying the detailed regulations growing out of it have implications for substantive policy, again often with ideological overtones. Even in departments where such tensions are kept within reasonable bounds living with the mass of formal regulations is a formidable task. Clearly, it will be years before the German universities fully digest the legacy of the post-1967 era.

## Notes

1

This oft-repeated phrase was first used by Carl Heinrich Becker, alternately minister and top civil servant in the Prussian Ministry of Education during the Weimer Republic; Becker, C. H., Gedanken zur Hochschulreform (Leipzig: Quelle & Meyer, 1919), p. 17. For a detailed analysis of the traditional university ideology as it developed in the decades after the founding of the University of Berlin in 1810 and its pervasive influence on the German universities until the mid-1960s, see Van de Graaff, John H., The Politics of German University Reform, 1810-1970. Ph.D. dissertation, Columbia University, 1973 (Ann Arbor: University Microfilms, 1974), especially pp. 95-107, 142-152, 178-231; cited hereafter as Van de Graaff, J. H., ... German University Reform.

2

Deutsch, Karl W., et al., France, Germany and the Western Alliance: A Study of Elite Attitudes on European Integration and World Politics (New York: Scribner's, 1967), pp. 125-126, found federalism more frequently mentioned as a negative aspect of the German political system than any other.

3

See Kloss, G., "The Growth of Federal Power in the West German University System", Minerva, IX (October 1971), pp. 510-527.

4

This was especially true of the states' authority over university organization, which is the main theme of this paper. But even in an area such as student grants, which could logically be construed as coming under its responsibility for social policy, the federal government held back until after 1967, when a pair of court decisions clarified its competence. See Briese, Volker, Zentralisierung der Kulturpolitik in der

BRD: Reformen zwischen Ökonomie und Ideologie (Konstanz: Universität Konstanz, Zentrum I Bildungsforschung, 1972).

5

Empfehlungen des Wissenschaftsrates zur Struktur und Verwaltungsorganisation der Universitäten (Tübingen: Mohr, 1968).

6

Kluge, Alexander, Die Universitäts-Selbstverwaltung: Ihre Geschichte und gegenwärtige Rechtsform (Frankfurt/Main: Klostermann, 1958), pp. 101-102, 213, 216-217.

7

Seier, Helmut, "Der Rektor als Führer", Vierteljahreshefte für Zeitgeschichte, XII (April 1964), pp. 105-146. Unpleasant as the Nazi measures were for the universities, they by no means succeeded in establishing absolute control.

8

Van de Graaff, J. H., ... German University Reform, pp. 192-198.

9

Legislation was enacted for the Technical University of Berlin (1956), and the Universities of Mainz (1961) and the Saar (1957).

10

Strecker, Gabriele, Der Hessische Landtag: Beispiel des deutschen Nachkriegsparlamentarismus (Bad Homburg: Gehlen, 1966), p. 68.

11

Ellwein, Thomas, et al., Parlament und Verwaltung. Teil I: Gesetzgebung und politische Kontrolle (Stuttgart: Kohlhammer, 1967), pp. 89-92, 222-223.

12

Calculated from Strecker, Gabriele, op. cit., p. 67.

13

Van de Graaff, J. H., ... German University Reform, p. 234, Table 6. The discrepancy is due to Lower Saxony, where from May 1965 on an SPD-CDU coalition ruled, with an SPD minister president and a CDU education minister.

14

Needless to say, the CDU prevailed in most Länder, and even in states such as Berlin, Bremen and Hesse, governed mainly by the SPD, its success in implementing reforms was limited. See Kuhlmann, Caspar, Schulreform und Gesellschaft in der Bundesrepublik Deutschland 1946-1966 (Stuttgart: Klett, 1969), pp. 30-41.

15

Forman, Paul, The Environment and Practice of Atomic Physics in Weimar Germany. Ph.D. Dissertation, University of California, Berkeley, 1967 (Ann Arbor: University Microfilms, 1968), pp. 59-63, 104.

16

To all intents and purposes, the parties hardly participated in the postwar debate on university reform; for example, see the comprehensive collection edited by Neuhaus, Rolf, Dokumente zur Hochschulreform 1945-1959 (Wiesbaden: Steiner, 1959).

17

It was precisely this inadequacy in the administration of higher education by the Länder, together with the need for some central coordination, that led to the founding of the Wissenschaftsrat (Science Council) in 1957. Members of the SPD and FDP (especially Hoegner, von Knoeringen and Hamm-Brücher from Bavaria) appear to have played a significant role in these negotiations, especially in the initial stages. See the accounts by Hess, Gerhard, and Pfuhl, Kurt, <sup>in</sup> Wissenschaftsrat 1957-1967 (Tübingen: Mohr, 1968), pp. 5-21.

18

For reviews of these legislative initiatives, see Ludwig, Herbert, and Mennicken, Han-Baldem, "Der Stand der Hochschulgesetzgebung", Deutsche Universitätszeitung, XVI (November 1961), pp. 17-24; XVII (March 1962), pp. 17-22; XVII (October 1962), pp. 8-18; Menzel, Eberhard, "Hochschulgesetze und Hochschulverfassungen", Juristenzeitung, IXX (1964), pp. 166-

171; 214-218. The following brief discussion omits Hesse, which is treated in detail later in the paper, and considers legislation already enacted for individual universities (note 9 above) only peripherally. These other cases support the conclusions reached.

19

The bills analyzed were drafted by: Bavarian Ministry of Education (CSU, 1961; cf. Ludwig and Mennicken, op. cit., XVII [March 1962], pp. 17-22); Bavarian FDP (1964; cf. Rau, Friedrich, Gedanken zur Hochschulentwicklung [Tübingen: Mohr, 1965], pp. 46-58); Baden-Württemberg government (CDU, with FDP; 3. Landtag, Beilage 3080, 4 June 1963); Baden-Württemberg SPD (3. Landtag, Beilage 3810, 17 January 1964); Hamburg FDP (1964; Ständige Konferenz der Kultusminister der Länder in der Bundesrepublik Deutschland, Hochschulgesetze und -satzungen [Bonn: 1966], pp. 97-115).

20

Weak versions were proposed by the Bavarian ministry (CSU), without a chancellor, and the Baden-Württemberg government (CDU), without the administrative council. The Bavarian FDP and the Baden-Württemberg SPD included both: the SPD version was stronger (see Rau, Friedrich, op. cit., p. 57).

21

The Hamburg FDP provided for a rectoral term of two years, and regarded a four-year term as optimum.

22

The Baden-Württemberg SPD provided for the option of a president. An alternative means of supervising the non-academic administration was by means of a mixed Kuratorium with representatives of the university, the state (and city), and sometimes even of other groups, as most notably in the Saar and the two Berlin universities.

23

In 1962, the Science Council referred to "the reality of an oligarchy of chairholders and a monocracy of institute directors" --who were usually one and the same: Anregungen des Wissenschaftsrates zur Gestalt neuer Hochschulen (Tübingen: Mohr, 1962), p. 17.

24

This was done in two main ways: Providing that the institutes were to be governed collectively by all Ordinarien and Nichtordinarien, with the directorship rotating, usually among the Ordinarien only, and defining the duties of the assistants specifically to include research, with the explicit right to use the appropriate facilities.

25

This applied to the senate and to the faculties (but not to the institutes); the students were usually to be excluded from deliberations on some matters, although here the provisions are vague. (The Baden-Württemberg SPD applied the exclusion to the assistants as well).

26

Indirect evidence for the conservative orientation of the CDU is the fact that they did not undertake any initiatives this period when in opposition.

27

The data are from Ständige Konferenz der Kultusminister, Kulturpolitik der Länder 1965 und 1966 (Bonn: Bundesdruckerei, 1967), passim.

28

"Zinn tritt ab," Die Zeit, 5 September 1963.

29

However, if one puts Hesse's reputation to a modest empirical test, using three basic measures of effort (ratio of students to professorial chairs, ratio of students to all teaching staff, and expenditures per student), Hesse did rank first in 1960 among the seven states with over 10,000 university students. By 1966 it had dropped to fourth place

(third on one measure), as a consequence of very rapid growth in its student population. Thus Hesse was very clearly not invulnerable, and its difficulty in meeting the pressures of expansion makes its failure to enact a stronger university law in 1966 more plausible.

30

Hessischer Landtag, IV. W. P., Drs.-Abt. III, 3. Sitzung, 28 January 1959, p. 22.

31

Hessischer Landtag, IV. W. P., Drs.-Abt. III, 25. Sitzung, 4 May 1960, p. 940.

32

The ministry draft was evidently dated 13 April 1960. I have not had access to a copy, but it was certainly very short, probably no more than ten paragraphs in length. Cf. Frankfurt University, Academic Senate, Minutes, 18 May 1960. The great majority of unpublished sources used in this chapter are to be found, chronologically ordered, in the Rectoral Files of Frankfurt University, File No. 120-12 (Hessian University Law); I have used it from its beginning in May 1960 through November 1970. Unless otherwise indicated, all references are to this file.

33

Hessische Rektorenkonferenz (hereinafter abbreviated HRK), Minutes, 13 May 1960. The discussion of the draft, evidently unplanned, was introduced by Professor Rudolf Reinhardt (Faculty of Law, Marburg), a member of the commission which had assisted the ministry. It consisted of seven persons in all: three ministry officials, and one full professor (evidently coopted by the ministry) from each of the four universities in Hesse; three were professors of law.

34

The Frankfurt rector, telephoning the ministry two days before the HRK meeting about another matter, had taken the opportunity to ask

about press reports on Schütze's statement of May 4th. He was told by a senior official that the matter was still in a preliminary stage, and that the universities would be consulted. Rectoral Files, Frankfurt University.

35

For these events, see Frankfurt University, Academic Senate, Minutes, 28 May 1960.

36

Frankfurt University, Rectoral Files, January 1962. The draft was 16 paragraphs in length; appended to it was an extensive "Begründung" or rationale, which may be an indication that plans to submit it soon to the legislature were fairly definite.

37

For example, when the chairman of the Frankfurt student committee (AStA) requested a copy of the ministry draft from the rector (with the characteristic promise to keep it strictly confidential), the rector refused (Frankfurt University, Rectoral Files, January 1962). However, some time later (in April 1962) the minister provided the students with the draft directly. See "Vorgeschichte des Hochschulgesetzes bis zur Beschlussfassung einer Kabinettsvorlage durch die Hessische Landesregierung - aus studentischer Sicht", Marburger Blätter, July 1965, pp. 22-23; (also in Die Darmstädter Studentenzeitung, July 1965, pp. 10-13). This is an account of the "early history" of the 1966 law; written by Hans-Joachim Pfaffendorf, it covers the period of January 1962 to April 1965. and will be cited as "Vorgeschichte I". A second part, "Vorgeschichte des Hochschulgesetzes (II) - aus studentischer Sicht", 30 June 1966 (mimeographed), in the Rectoral Files, Frankfurt University, covers May 1965 to June 1966 and will be cited as "Vorgeschichte II".

38

"Vorgeschichte I". The minutes of the commission meeting (Hessen, Kultusministerium, "Ergebnisprotokoll über die Arbeitssitzung am 27.6.62. Betr.: Arbeitsentwurf eines Hochschulgesetzes", Wiesbaden, 28 June 1962 [Mimeographed].) confirm that the students had not had access to the rector's draft. The rectors themselves were not present at the meeting. For the students' proposals, see Verband Deutscher Studentenschaften - Landesverband Hessen, "Vorschläge für den Abschnitt 'Studentenschaft' im Hessischen Hochschulgesetz", 11 October 1962 (Mimeographed). They were adopted unanimously at a regular state-wide conference of the student association.

39

In 1965, the Marburg rector was to speak of the "extensive agreement achieved" on the 1962 proposal; Hensel, K. Paul, "Das Hochschulgesetz: Entwicklungstendenzen des Gesetz-Entwurfes", Deutsche Universitätszeitung. (cited hereafter as DUZ, XX, 6 (June 1965), p. 27. The Frankfurt Legal and Constitutional Committee, in its detailed position paper on both drafts, criticized the rectors' proposals nearly as often as the ministry's; see Frankfurt University, Academic Senate, Rechts- und Verfassungsausschuss, "Stellungnahme zu den Entwürfen eines Gesetzes über die wissenschaftlichen Hochschulen des Landes Hessen", Frankfurt, 21 December 1962 (Mimeographed).

40

See especially the minutes of the second meeting of the commission (Hessen, Kultusministerium, "Ergebnisprotokoll über die Arbeitssitzung am 23.7.1962. Betr.: Entwurf eines Hochschulgesetzes". Wiesbaden, 23 July 1962 [Mimeographed]).

41

The tacit assumption was that only one or two students would

be admitted to each organ--as was already the practice in some cases. According to the ministry draft, the students were to be excluded only from discussions of professorial appointments and personal matters of the professors. That not all professors rejected this degree of participation for the students is shown by the fact that the Frankfurt Legal and Constitutional Committee preferred the ministry version over the much more equivocal formulation proposed by the rectors; cf. Rechts- und Verfassungsausschuss, "Stellungnahme zu den Entwürfen ...", op. cit. (note 39 above).

42

For example, in at least one instance the rectors objected successfully) to the inclusion of the university administrative officers in a discussion at the ministry; cf. HRK, Minutes, 30 January 1962. It was argued that since the draft involved the future position and function of the administrators this could be better discussed in their absence.

43

For example, in the meeting of the Frankfurt Academic Senate on 11 July 1962, considerable dissatisfaction was expressed with the rector's handling of the matter. The professors were displeased that the rectors' counterproposals had been given to the ministry before the senate had seen them, and that students had received the ministry draft before the faculties had discussed it. The dean of the law faculty even urged breaking off the discussions with the ministry.

44

Heassischer Landtag, V. W. P., Drs.-Abt. III, 3. Sitzung, 30 January 1963, pp. 22-23. Soon afterwards, Minister Schütte stated that he expected the situation to become clearer in the next half-year;

5. Sitzung, 20 February 1963, pp. 67-68, in response to a question by Mrs. Walz (CDU).

45

The debates were occasioned by the budget (Hessischer Landtag, V. W. P., Drs.-Abt. III, 8. Sitzung, 3 April; 17. Sitzung, 13 November 1963) and by several "grosse Anfragen" on various aspects of university reform (13. Sitzung, 26 June; 16. Sitzung, 25 September 1963).

46

Hessischer Landtag, V. W. P., Drs.-Abt. III, 8. Sitzung, 3 April 1963, p. 212. In a later debate, Schauss (FDP) noted: "the stimulus for [university] reform must come from the outside, that is, from the state" (*ibid.*, 16. Sitzung, 25 September 1963, p. 583). Walz (CDU) quoted a well-known statement by the sociologist Helmut Schelsky to the same effect: "The university will not pull itself out of the swamp by its own hair" ("Die Universität zieht sich nicht am eigenen Zopf aus dem Sumpf"); *ibid.*, 13. Sitzung, 26 June 1963, p. 445. See Schelsky, H., Einsamkeit und Freiheit (Reinbek bei Hamburg: Rowohlt, 1963), p. 179.

47

Anregungen des Wissenschaftsrates ..., *op. cit.* (note 23); for the structural proposals, see pp. 19-25; on curriculum, pp. 25-26, 51-52.

48

Hessischer Landtag, V. W. P., Drs.-Abt. III, 7. Sitzung, 27 February 1963, p. 143; *ibid.*, 13. Sitzung, 26 June 1963, p. 445. Mrs. Walz specifically mentioned Friedrich Edding's work on the economic benefits of education.

49

Mrs. Horn (SPD); Rodemer (FDP); Hessischer Landtag, V. W. P., Drs.-Abt. III, 16. Sitzung, 25 September 1963, pp. 588, 591.

50

The advent of this concern as a significant issue was signalled by the publication of Ralf Dahrendorf's Bildung ist Bürgerrecht (Hamburg: Nannen-Verlag, 1965; it also appeared as a series of articles in the liberal weekly, Die Zeit, November-December 1965), which gave the movement for broadening access to academic secondary and higher education its manifesto and (in the book's title) its most effective slogan.

51

There were two broad categories of teaching staff below the chair-holding professors (Ordinarien). The lower category were generally termed assistants; they usually possessed the doctorate and were assigned to a particular Ordinarius, to teach courses for him (often quite independently) and help him with his research. The upper category, the Nichtordinarien, included the classical Privatdozent, ausserplanmässige professors, and other subgroups; all were expected to have earned the Habilitation, a qualification requiring years of research work beyond the doctorate to produce a much more substantial thesis. The habilitation was the necessary qualification for a call to a chair.

52

Studenten und die neue Universität. Gutachten einer Kommission des Verbandes Deutscher Studentenschaften [VDS] zur Neugründung von Wissenschaftlichen Hochschulen (Bonn: VDS, 1962). SDS Hochschuldenkschrift (Frankfurt/Main: Verlag Neue Kritik, 1972); originally published in 1961 under the title Hochschule in der Demokratie, it appeared in greatly expanded form as Nitsch, Wolfgang, et al., Hochschule in der Demokratie: Kritische Beiträge zur Erbschaft und Reform der deutschen Universität (Berlin: Luchterhand, 1965).

53

Discussion Bill I: Diskussions-Entwurf eines Gesetzes Über die wissenschaftlichen Hochschulen des Landes Hessen, 12 Oktober 1964 (Mimeographed); Discussion Bill II, with the same heading, was dated 19 January 1965. The government bill was adopted in April and appeared as: Vorlage der Landesregierung. Gesetz Über die wissenschaftlichen Hochschulen des Landes Hessen (Hochschulgesetz), Hessischer Landtag, V. W. P., Drs.-Abt. I, Nr. 1366, 11 May 1965; cited hereafter as Vorlage der Landesregierung ... The three drafts were, respectively, 44, 48, and 50 paragraphs in length. (The law as finally passed had 51 paragraphs).

54

From a pragmatic point of view, two arguments were made for a framework law: 1) The traditions and specific tasks of the universities vary considerably, and a framework law permits them to adapt their organization accordingly. 2) To adjust to changing conditions over time, university statutes are more easily amended than a full-scale law. However, even statutes, although no longer unilaterally promulgated by the state as under absolutist regimes, are still subject to ratification [Genehmigung] by the ministry and this was often an arduous and lengthy process involving considerable negotiation between university and ministry.)

55

The constitutional argument is based on the first sentence of Article 5(3) of the Federal Basic law ("Art and science, research and teaching are free ") as well as Article 60(1) of the Hessian Constitution ("[The universities] have the right of self-administration, in which the students are to participate "). See, for example, Reinhardt,

Rudolf, "Hochschulreform durch Hochschulgesetz", DUZ, XX, 6 (June 1965), pp. 33-36. From a constitutional point of view, however, legislation enacted by parliament can be seen as functionally equivalent to the statutes as traditionally promulgated by the sovereign or his ministers. Politically, this legal issue served as the basis for a tactical split in the ranks of the professors, between those who wanted to accept the government's text as the basis of discussions, and those who insisted on a framework law.

56

The faculties' right to propose three candidates for a vacant professorial chair to the ministry had been gradually accepted in the course of the nineteenth century; only after 1945 did it become the virtually invariable practice of the state to accept one of the faculty's nominees. See Van de Graaff, J. H., ... German University Reform, pp. 107-112, 193-194; Kluge, Alexander, op. cit. (note 6), pp. 169-207.

57

German university law had traditionally distinguished, in theory and practice, between academic administration, under academic organs (rector, senate, faculties) and general or financial administration, which fell more or less directly under the control of the state. This distinction--a prime example of the "virulent", value-laden dichotomies which Ralf Dahrendorf sees as besetting German social thought (Society and Democracy in Germany [Garden City, New York: Doubleday Anchor Books, 1969], p. 120)--was firmly rooted in traditional university ideology; indeed, Wilhelm von Humboldt's renown memorandum on the founding of Berlin university spoke of its "internal and external organization". Sheltered by this dichotomy, German academics were able to shrug off

material and organizational restrictions imposed by the state as merely "external" matters and to boast of their autonomy in "internal", academic affairs, which were felt to be the only realm which mattered.

58

The chancellor could object "if the decision is illegal or inappropriate, or if it violates the principles of economic and thrifty administration". Vorlage der Landesregierung ..., Par. 21 (5). Only the words "or inappropriate" were deleted in the bill as enacted.

59

Vorlage der Landesregierung ..., "Begründung", p. 44.

60

Vorlage der Landesregierung ..., "Begründung", p. 35 (emphasis added).

61

The number of semesters taken by the average student to prepare for his final examination rose from 9.7 in 1960 to 10.8 semesters in 1965. Empfehlungen des Wissenschaftsrates zum Ausbau der wissenschaftlichen Hochschulen bis 1970 (Tübingen: Mohr, 1967), pp. 16-18.

62

Empfehlungen des Wissenschaftsrates zur Neuordnung des Studiums an den wissenschaftlichen Hochschulen (Tübingen: Mohr, 1966).

63

The students noted that if this clause were carried to its logical conclusion, the Ordinarien should be treated as a separate group as well.

64

The German term is "Körperschaft des öffentlichen Rechts". This form already existed in two of the Hessian universities: Gießen and the Technische Hochschule Darmstadt. Although included in the final version of the law, it was strongly opposed by the professors.

65

In general, student participation had been accorded only in "matters of concern to the students" (studentische Angelegenheiten), as defined by the rector, often in ad hoc fashion. For the extent of

student and assistant representation in the 1950s and early 1960s, see Van de Graaff, J. H., ... German University Reform, pp. 219-223, and the sources cited there.

66

"Leitlinien für die Formulierung des Entwurfs eines Gesetzes über die wissenschaftlichen Hochschulen im Lande Hessen" [September 1964], Photocopy of typescript, Frankfurt University Rectoral Files. See also "Vorgeschichte I"; the meetings took place on 29 and 30 September 1964.

67

Hessischer Landtag, V. W. P., 29. Sitzung, 9 September 1964, p. 1142. For press accounts on the planned legislation, see Frankfurter Rundschau and Frankfurter Neue Presse, 1 October 1964.

68

"Vorgeschichte I"; the Rectoral Files, Frankfurt University, substantiate certain of these events.

69

See HRK, Minutes, 6 January 1965; attending were nine professors, including the rectors, and seven students, although the latter were present for the first part of the meeting only. Two further meetings towards the end of 1965 made more progress; see note 115 below.

70

The rectors appear to have countered this desire of the Nichtordinarien by arguing that their demands could be best accommodated after passage of the legislation, in the statutes to be drafted by each of the universities. See Frankfurt University, Rectoral Files, No. 150-08 ("Neue Satzung"), for the end of May 1967; at that time a main spokesman for the Nichtordinarien regretted their previous policy of restraint, for a proposed draft of the new Frankfurt statutes seemed to discriminate against their interests.

71

See the Minutes of a meeting on 4 February 1965 in Würzburg, when the idea of drafting a framework law as a counterproposal was apparently accepted.

72

This decision appears to have been taken at a meeting in Darmstadt on 15 February 1965 (Minutes, Rectoral Files, Frankfurt University), although a meeting in Frankfurt on 11 February had commenced work on a detailed position paper.

73

Other manifestations of the importance of legal expertise in academic affairs were the subcommittees on law usually established by the university senates (e.g., in Frankfurt, the Legal and Constitutional Committee) and the legal counsels (usually part-time; called Rechtsrat or Universitätsrat) advising the rectors. For the latter, see the standard text on university law: Thieme, Hans, Deutsches Hochschulrecht (Berlin: Carl Heymanns, 1956), pp. 182-185. The national rectors' conference (WRK) maintained a standing "Commission for University Law", which at this time was chaired by Professor Reinhardt.

74

The working group met twice, on 1 and 19 December 1964. As we shall see, a similar delegation of ministerial officials took part in the deliberations of the parliamentary committee on the bill. The inclusion of justice and finance officials was characteristic, for the preparation of any major legislation required the advice of the justice ministry on related laws and other legal factors, as well as the finance ministry's perspective on the budgetary implications.

75

See HRK, Minutes, 6 January 1965, in Darmstadt (the students were present for the first part of the meeting, but the TAZ article was not

discussed until they left); also Frankfurt University, Rectoral Files, 13 January 1965.

76

"Vorgeschichte I"; however, this agreement affected the text of Discussion Bill II (circulated in January) only marginally, as the earlier version had largely incorporated the students' desires.

77

Verband Deutscher Studentenschaften, Landesverband Hessen, "[Stellungnahme zum] Diskussions-Entwurf vom 12. Oktober 1964," Marburg, 13 November 1964; "Stellungnahme der hessischen Studentenschaften zum Diskussionsentwurf Nr. II eines Gesetzes Über die wissenschaftlichen Hochschulen des Landes Hessen (Stand 19. January 1965)," Marburg, 19 February 1965 (Both mimeographed). The paper on the government bill appeared as a printed brochure in the summer of 1965 and were published as "Stellungnahme der hessischen Studentenschaften zur Kabinettsvorlage der Hessischen Landesregierung für ein Hochschulgesetz" [28 June 1965], DUZ, XX, 8/9 (August/September 1965), pp. 47-53.

78

These so-called "Formulierungshilfen" are printed in parallel with corresponding sections of the government bill and Discussion Bill I, in DUZ, XX, 6 (June 1965), pp. 5-13. The rest of this issue of the DUZ is devoted to the legislation, with short articles, position papers and statements by various groups and individuals.

79

Hensel, K. Paul, "Das Hochschulgesetz: Entwicklungstendenzen des Gesetz-Entwurfes", in ibid., p. 27.

80

Frankfurt University, Rectoral Files.

81

In an interview, Marburger Blätter (June 1965, p. 34), Schütte states that he warned the rectors repeatedly that the next move was up to the cabinet.

82

I have no direct evidence as to which members of the cabinet may have advocated changes, nor have I had access to the text which Schütte actually presented to the cabinet. (It considered the bill twice, on 16 March and 27 April 1965.) However, from the fact that, relative to Discussion Bill I (October 1964), Schütte had weakened Discussion Bill II in January 1965 (i.e., made it less reformist and more acceptable to the professors) in more points than were strengthened, and the fact that the government bill was then strengthened despite the rectors' demands for still weaker provisions, we can infer that the cabinet intervened to counter Schütte's inclination to favor the professors.

83

In Schütte's interview with Marburger Blätter, June 1965, p. 34, he implies that in the end he did not have to yield too much to the cabinet's pressure for a chancellor who would be less faithful to the university. A direct comparison of the text of Discussion Bill II with the government bill tends to confirm this.

84

The declarations (Erklärungen) are in DUZ, XX, 6, (June 1965), pp. 24-25. They were adopted in Frankfurt by the council (and the academic senate as well), and in Marburg, Darmstadt and Gießen by the Grosser Senat. These bodies were of course dominated by the full professors, although in Marburg and Frankfurt one-third of the membership consisted of Nichtordinarien.

85

Declarations by the Universities of Marburg and Frankfurt, in ibid., pp. 24-25. The latter passage contains an amusing play on words in the original: "Die [Universität Frankfurt] bedauert feststellen zu müssen,

dass durch dieses Verfahren ihr Vertrauen zu dem Herrn Hessischen Kultusminister [Ernst Schütte] ernstlich erschüttert worden ist."

The Minutes of this Konzip meeting (20 May 1965; Frankfurt University, Rectoral Files) record that this passage was voted on separately (among others) and accepted by 60 to 29, with eight abstentions. This fact weakens the university's claim to unanimity, even though the statement as a whole was passed with no negative votes.

86

Declaration by the University of Marburg, in ibid., p. 25.

87

Darmstadt restressed its preference for a framework law (ibid., p. 25). See also the articles by Rudolf Reinhardt (Marburg), "Hochschulreform durch Hochschulgesetz", ibid., pp. 33-36, and by Willi Hartner (Frankfurt), "Der wahre Revolutionär erkennt die Fehler des Alten", ibid., pp. 56-58.

88

Only Frankfurt and Marburg mentioned the position of the students in their statements, while Darmstadt and Giessen omitted it. The latter two universities already practiced a considerable degree of student involvement and were destined later to experience much less friction in implementing that aspect of the legislation. In a 1966 sample survey of Giessen professors (including Ordinarien and Nichtordinarien), 49 per cent felt that student participation should extend to "general university affairs", while 37.5 per cent preferred to limit it to "purely curricular matters" (reine Studienfragen; the remaining 13.5 per cent did not answer). See Pross, Helge, Boetticher, Karl W., and Laubsch, Landolf, Professoren in der Provinz: Eine Erhebung an der Justus-Liebig-Universität Giessen (Neuwied and Berlin: Luchterhand, 1970), pp. 117-121. It is probable that the Darmstadt professors were

about as liberal, while the Frankfurt and Marburg professors were more conservative.

89

Among the statements in the archives of the Westdeutsche Rektorenkonferenz are the following: University of Göttingen (also in DUZ, XX, 10 [October 1965], p. 22), University of Würzburg, Natural Science Faculty of Erlangen-Nürnberg University, Philosophy Faculty of Münster University. Würzburg made the quaint but revealing error of citing the June 1965 issue of the "Göttinger Universitätszeitung"--it had become the Deutsche Universitätszeitung in 1950!

90

However, the debate made clear that the Hessian universities were still divided on tactics; by the summer, three of the four favored a framework law, as did the national Westdeutsche Rektorenkonferenz (WRK) itself. For the WRK's debate, see Frankfurt University Rectoral Files, May-July 1965, and (for the text of the WRK's resolution) DUZ, XX, 8/9 (August/September 1965), pp. 39-40. The WRK seems not to have taken any further action on the Hessian legislation.

91

The union (Landesverband Hessen, Gewerkschaft Erziehung und Wissenschaft [GEW]), representing mainly primary school teachers, also urged full integration of the two Institutes for Education into the universities of Frankfurt and Giessen. For the initial statement, see ibid., p. 55. The GEW later submitted a somewhat more detailed petition to the state parliament.

92

In view of the important part played by liberal professors such as Jürgen Habermas and Ludwig von Friedeburg in the renewed legislative efforts of 1968-70 in Hesse, it is worth stressing here that they seem to have played no role whatsoever in the enactment of the 1966

law, which is an indication of the degree of consensus on the traditional university ideal.

93

Die Darmstädter Studentenzeitung, XIII (July 1965), p. 6.

94

For the official position paper of the Hessian students, see "Stellungnahme der hessischen Studentenschaften...", op. cit. (note 77), pp. 47-53. The "negative catalogue" of topics from which the students were to be excluded comprised: professorial appointments (Berufungen), Habilitation and doctoral examinations, personal affairs of the professors, honorary degrees, elections, and staff appointments; of these the last three had been added in the government bill. The act as finally passed did not include elections but added "other examinations" (sonstige Prüfungen).

95

Ibid., p. 47.

96

The press release is in PUZ, XX, 6 (June 1965), p. 55; it appeared originally in Oberhessische Presse, 11 May 1965. The text of the rector's speech, held on 25 May 1965 in Marburg, was published as Hensel, Paul, "Das Hochschulgesetz: Entwicklungstendenzen des Gesetz-Entwurfes", ibid., pp. 26-32 (quotes at 26). For accounts of the events, see "Recht im objektiven Sinne: Die Diskussion um das hessische Hochschulgesetz", and "Die Studenten und ihre Funktionäre", Marburger Blätter, June 1965, pp. 5-7, 22.

97

Decision of 1 June 1965; see Marburger Blätter, June 1965, p. 25.

98

One student commentator pointed out that only just after the Marburg rector's speech, which was in fact applauded by his largely student audience, did the rectoral office make available more than a minimal number of copies of the government bill (this was two weeks after its

publication): the writer alleged that through "sophisticated demagoguery the mass of uninformed students [were] to be mustered against their spokesmen" ("Die Studenten und ihre Funktionäre", p. 22).

99

On this point see Van de Graaff, J. H., ... German University Reform, pp. 225-226; Adam, Heribert, Studentenschaft und Hochschule: Möglichkeiten und Grenzen studentischer Politik (Frankfurt/Main: Europäische Verlagsanstalt, 1965), esp. pp. 26-29; Anger, Hans, Probleme der deutschen Universität (Tübingen: Mohr, 1960), pp. 155-177. Both the latter studies include extensive quotes from interviews with professors.

100

For the Hessian Landtag it was a relatively long debate, lasting 3 hours and 20 minutes. Hessischer Landtag, V. W. P., 39. Sitzung, 2 June 1965, pp. 1655-1679.

101

This practice accords with the formal rules of the national Bundestag, where it derives from the view "that the Government and Parliament are entirely separate entities", which has its origin in the monarchical period. See Loewenberg, Gerhard, Parliament in the German Political System (Ithaca, New York: Cornell University Press, 1967), p. 307.

102

The Landtag consisted of 96 representatives in all; the SPD held a majority of 51 seats and, together with the 6 of the CDU/BHE formed the governing coalition. The CDU had only one ministry (Agriculture) and played no discernable independent role in the law. The CDU had 28 seats and the FDP 12.

103

Hessischer Landtag, V. W. P., Drs.-Abt. III, 39. Sitzung, 2

June 1965, pp. 1664, 1668.

104

Ibid., p. 1670. An edited and expanded version of Mrs. Walz's remarks is in DUZ, XX, 6 (June 1965), pp. 37-43.

105

The bill was scrutinized in full eight times, paragraph by paragraph, and was extensively reshuffled to give it a more logical and systematic structure. Five stages can be distinguished:

- (1) "Cursory discussion" (3 meetings, November-December 1965).
- (2) Closed hearings (2 meetings, January 1966).
- (3) Substantive deliberation (6 meetings, January-March 1966).
- (4) Formal voting on version for second reading (1 meeting, March 1966).
- (5) Discussion and voting on version for third reading (2 meetings, April-May 1966).

106

This was in a talk Schütte gave to a symposium at the Evangelical Academy of Tutzing: see "Vorgeschichte II", and Frankfurt University, Academic Senate, Minutes, 3 November 1965. There had been other private reports indicating flexibility on the part of the government.

107

Hessischer Landtag, Kulturpolitischer Ausschuss, 30.- 32. Sitzungen, 18 and 24 November, 16 December 1965. The minutes of the committee provide a close paraphrase of each member's remarks; on special occasions, such as hearings or exchanges of unusual political significance they are verbatim. The average attendance at the committee's meetings was 22:

13 legislators (seven SPD, one GDF/BHE, three CDU, and two FDP), and nine ministry officials (five from Education, two from Justice, one from Finance and one from the state chancellery--the minister president's

office). The civil servants of course had no vote, but they were present at all meetings.

108

Mallmann, Walter, Stellungnahme und Änderungsvorschläge zu der Regierungsvorlage eines Hessischen Hochschulgesetzes. Materialien zur Diskussion um das Hessische Hochschulgesetz, 1 (Frankfurt/Main: Johann-Wolfgang-Coethe-Universität, August 1965). Cited hereafter as Mallmann, W., Stellungnahme ...

109

Hessischer Landtag, Kulturpolitischer Ausschuss, 30. Sitzung, 18 November 1965, pp. 25-26. This was a formal decision (very unusual at this early stage), made by consensus at the suggestion of the minister. The clause in question was in Par. 6 (1) of the bill.

110

Hessischer Landtag, Kulturpolitischer Ausschuss, 31. Sitzung, 24 November 1965, pp. 30-35. These two cuts were adopted more informally and tentatively, although with the minister's active involvement (cf. Pars. 20 [2] and 21 [5] of the bill). Together with the previous change, they had the effect of enhancing the university's institutional autonomy, at least in a formal sense.

111

Hessischer Landtag, V. W. P., Drs.-Abt. III, 51. Sitzung 30 March 1966, p. 2314. Emphasis added.

112

The assistants (Assistenten), who had organized to the point of preparing a three-page petition for submission to the Landtag (Hessischer Landtag, Petition Nr. 1207/V; it was signed by 161 Hessian assistants--just 6 per cent at the total) were not heard, nor were the Nichtordinarien. However, it is probable that neither asked to testify, as the question was not brought up in committee.

113

Rüegg, a sociologist of Swiss nationality, was destined to remain rector in Frankfurt until May 1970; he served for a year as president of the WRK (1967-68), and in 1971 became a charter member of the conservative Association for Freedom of Science (Bund Freiheit der Wissenschaft). He became a highly controversial figure through his uncompromising stand against expanded participation and the student radicals in Frankfurt.

114

The official proposals of the Hessian universities are in "Vorlage der Hessischen Hochschulen: Gesetz über die wissenschaftlichen Hochschulen des Landes Hessen", 22 December 1965 (Mimeographed). The other major proposal from the side of the professors was Mallmann, W., Stellungnahme ..., which actually had more influence on the deliberations than the universities' paper.

115

See "Vorgeschichte II", which mentions Mallmann's Stellungnahme... as having "contributed extraordinarily to making the further discussion more objective". In October, Pfaffendorf, as the students' spokesman met with Rüegg, the new HRK chairman; then the full HRK held two meetings with the students, in November and December. The November meeting reached "almost complete agreement" ("Vorgeschichte II") on the general points which the two groups rejected in common; however, in the end the students did not accept the rector's detailed draft proposal in its entirety.

116

The SPD hinted at one point that they had considered adopting a stand-pat strategy, making concessions only when forced. Hessischer Landtag, Kulturpolitischer Ausschuss, 39. Sitzung, 3 March 1966, pp. 67-70.

For other discussions of procedure, see pp. 37-38 of the same meeting, and 38. Sitzung, 2 March 1966, p. 21; 41. Sitzung, 10 March 1966, pp. 5-7.

117

Hessischer Landtag, Kulturpolitischer Ausschuss, 39. Sitzung, 3 March 1966, pp. 9-11; for other mentions of the problem of confidentiality (Vertraulichkeit), see also p. 1 of the same meeting; 36. Sitzung, 27 January 1966, p. 35; 38. Sitzung, 2 March 1966, p. 11; 41. Sitzung, 10 March 1966, pp. 2-8 (this includes the discussion of the other breach of confidentiality, when the CDU held a press conference on its proposals without informing the other members of the committee).

118

These estimates are based on meetings recorded in "Vorgeschichte II" and the Rectoral Files, Frankfurt University.

119

Spiro, Herbert, J., Government by Constitution: The Political Systems of Democracy (New York: Random House, 1959), p. 181. Sonthheimer, K., Grundzüge des politischen Systems der Bundesrepublik Deutschland (Munich: Piper, 1971), p. 79, refers to the Germans' "tendency to clothe political problems as formal legal problems and to discuss them from a juridical point of view"; he terms this formalism".

120

This is in Par. 23 (4) of the final law. For the adoption of the clause, including an assertion that it had only psychological significance, see Hessischer Landtag, Kulturpolitischer Ausschuss, 41. Sitzung, 10 March 1966, p. 27. Since there was relatively little meaningful substantive outlet for the legislators' legalistic predilections, they devoted meticulous attention to systematizing and per-

fecting the structure of the law (compare, for example, Pars. 3-5 of the law as enacted with the corresponding paragraphs of the original bill). Minor questions of formulation were debated at great length, while certain basic issues received very little attention; an extreme case is student participation, which is discussed on less than three pages of the several hundred in the total transcript (exclusive of the hearings).

121

Spiro, H. J., op. cit., p. 184, notes the Germans' frequently expressed "horror of a legal vacuum". Thus Frankfurt's failure to enact statutes was a serious matter, and the minister was forced to decree that after 31 December 1968, when the old statutes finally became invalid (after two extensions enacted by the legislature), the legal status then existing would continue until new statutes came into force. In the event, the new law of May 1970 came first, which was so detailed that it virtually removed all need for the universities to enact their own statutes. Hesse's 1966 law was the last one enacted by any of the states which did not provide in detail for such difficulties.

122

A more immediate difficulty was that the law made no provision for interim participation by the groups. Thus in Frankfurt, for example, the academic senate resisted admitting students on the new basis before the new statutes were drawn up. On practice elsewhere at this time, see note 65.

123

There were 49 and 51 paragraphs in the versions of 17 March and 5 May respectively. In numerous cases, several parts of a paragraph were voted on separately. Somewhat arbitrarily, this tabulation records

a paragraph as having been opposed if any part of it was opposed by either CDU or FDP, or both. When all votes are tabulated separately, the result is substantially the same. For full details, see Van de Graaff, J. H., ...German University Reform, pp. 307-308, Tables 8 and 9.

124

Hessischer Landtag, V. W. P., Drs.-Abt. III, 51. Sitzung, 30 March 1966, pp. 2301-2320.

125

See Frankfurter Rundschau, Darmstädter Echo, and Giessener Allgemeine, all of 25 March 1966.

126

Hessischer Landtag, V. W. P., Drs.-Abt. III, 53. Sitzung, 11 May 1966, pp. 2418-2427. The unanimity was actually broken by a single abstention by a member of the FDP. This was the only recorded vote deviating from the party line during the entire deliberations.

127

The confrontation came to a head in December 1967. The most the Frankfurt professors would concede was a distribution of 40 per cent for the Ordinarien, and 20 per cent for all other groups (Nichtordinarien, assistants, students). The students demanded that professors, assistants, and students each receive one third of the seats; Ordinarien and Nichtordinarien were to be lumped together (both of the latter groups found this in particular unacceptable).

128

Minutes, Statutes Committee (Satzungsausschuss), Marburg University, 13. Sitzung, 19 December 1966.

129

In contrast, in a survey of students at Frankfurt University in 1959, only 29 per cent claimed to have participated in demonstrations. See Friedeburg, Ludwig von, et al. Freie Universität und politisches Potential der Studenten: Über die Entwicklung des Berliner Modells und

den Anfang der Studentenbewegung in Deutschland (Neuwied: Luchterhand, 1968), p. 221. Note that the Berlin survey was carried out before the high point of the mid-1960s crisis. One factor in the Berlin development was the active role students had played in the founding of the Free University, and their consequent participation in the academic senate and the faculties on a broader basis than anywhere else in Germany.

130

Cited in ibid., p. 324.

131

See the foreword in Albers, Detlev, Demokratisierung der Hochschule: Argumente zur Drittelparität (Bonn: Verlag Studentenschaft, 1968), pp. 7-9. It went through three printings by the Hamburg AStA and appeared in the DUZ (December, 1967), before being revised and published as ibid. From 1969 on the inclusion of a small number of non-academic staff was demanded and swiftly accepted nearly everywhere (at least for matters of general policy). One-third parity as practiced in Bremen henceforth included students, academic staff and non-academic staff as the three equal groups; this has remained a unique arrangement.

132

Empfehlungen des Wissenschaftsrates zur Neuordnung des Studiums ... (1966), op. cit.

133

Stoltenberg, Gerhard, Staat und Wissenschaft: Zukunftsaufgaben der Wissenschafts- und Bildungspolitik (Stuttgart: Seewald, 1969), p. 24.

134

Zur Organisation der Hochschule selbstverwaltung. Bericht der Landesrektorenkonferenz des Landes Nordrhein-Westfalen, 2 May 1968 (No imprint). The report bears the stamp of the then conference chairman, Kurt Biedenkopf, a professor of economics who has since become General Secretary of the national CDU.

135

Stoltenberg, Gerhard, Hochschule, Wissenschaft, Politik:

Zwölf Beiträge (Frankfurt/Main: Ullstein, 1968), p. 93.

136

Cited in Frankfurter Allgemeine, 15 November 1967.

137

Nonetheless, at least one high official in the Hessian Ministry of Education urged that the 1966 law be left in force, with measures to ensure the application of the dubious clauses.

138

Rhineland-Palatinate, Landesgesetz Über die wissenschaftlichen Hochschulen in Rheinland-Pfalz (Hochschulgesetz), Gesetz- und Verordnungsblatt, 1971, p. 5, Par. 69.

139

See Shils, Edward, "The Freedom of Teaching and Research", Minerva, XI (October 1973), pp. 433-441.

## **INSTITUTION FOR SOCIAL AND POLICY STUDIES**

The mission of the Institution for Social and Policy Studies (ISPS) is to encourage and undertake multidisciplinary research and education. The ISPS is oriented to the exploration of social problems rather than to the refinement of discipline-based methodology. In recent years, ISPS research has focused on the problems of the city, education, health service delivery, and on the modeling of social systems. Currently, research is also being developed on criminal justice, governmental reform, environment, income distribution, aging, the policy-making process, and value problems in public policy. ISPS is not a consulting organization but an instrument for enriching the social sciences and related disciplines in the University.

**Institution for Social and Policy Studies  
16A Yale Station (111 Prospect Street)  
New Haven, Connecticut 06520**